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Canada-EU CETA Draft Consolidated Text – February 2012

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**M. Enhanced Cooperation on Science, Technology,
Research and Innovation** (**)

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(*) For these issues, the structure will be reviewed as negotiations progress. These issues may take the form of separate chapters, or may include additional chapters, for instance for subjects such as movement of persons, telecommunications, e-commerce, financial services and cultural cooperation.

(**) The final placement in the structure of the agreement to be determined.

Section 1.01

Section 1.02

Section 1.03

Section 1.04

Section 1.05

Section 1.06

Section 1.07

Section 1.08

Section 1.09

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A.

TITLE ON TRADE IN GOODS

Section 1.10 CHAPTER X

Section 1.11 NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

(i) ARTICLE 1: OBJECTIVE

The Parties shall progressively liberalise trade in goods over a transitional period starting from the entry into force of this Agreement in accordance with the provisions of this Agreement.

(ii)

(iii) ARTICLE 2: SCOPE

This Chapter applies to trade in goods of either Party, as defined in [], except as otherwise provided in this Agreement.

[ARTICLE 3: DEFINITIONS

For purposes of this Chapter [EC: the following definitions apply:]

Advertising films and recordings: [means] recorded visual media or audio materials, consisting essentially of images and/or sound, showing the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of a Party, provided that such materials are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public, and provided that they are imported in packets that each contain no more than one copy of each film or recording and that do not form part of a larger consignment; [*]

Agricultural good: [means] A product listed in Annex 1 of the WTO Agreement on Agriculture with any subsequent changes agreed in the WTO to be automatically effective for this Agreement;

Commercial samples [means]:

- (a) Any goods that are representative of a particular category of goods produced outside the territory of a Party and that are imported solely for the purpose of being exhibited or demonstrated to solicit orders for similar goods to be supplied outside the territory of that Party; and
- (b) Any films, charts, projectors[EC: ,] [CN: and] scale models [EC:or] [CN: and] similar items, imported solely for the purpose of illustrating a particular category of goods produced outside the territory of a Party to solicit orders for similar goods to be supplied from outside the territory of that Party. [*]

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Commercial samples of negligible value [means] commercial samples having a value, individually or in the aggregate as shipped, of not more than one USD, or the equivalent amount in the currency of any of the Parties, or so marked, torn, perforated or otherwise treated such that they are unsuitable for sale or for use except as commercial samples; [*]

Consumed [means]:

- (a) actually [CN: consumed] [EC: used]; or
- (b) further processed or manufactured so as to result in a substantial change in value, form or use of the good or in the production of another good; [*]

Customs duty : Any duty or charge of any kind imposed on or in connection with the importation [EC: or exportation] of a good, including any form of surtax or surcharge imposed on or in connection with such importation [EC: or exportation]. [It] does not include any:

- (a) charge equivalent to an internal tax imposed consistently with Article [4 (National Treatment)] of this Agreement;
- (b) duty imposed pursuant to a Party's domestic law consistently with Chapter ... [Trade Remedies]
- (c) measure applied consistently with the provisions of Article VI or Article XIX of the GATT 1994, the WTO Agreement on Implementation of Article VI of the GATT 1994, the WTO Agreement on Subsidies and Countervailing Measures, the WTO Agreement on Safeguards, and Article 22 of the Dispute Settlement Understanding.
- (d) fee or other charge imposed consistently with Article VIII of GATT;
- (e) [premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas or tariff preference levels.]

duty-free [means] Free of customs duties; [*]

good imported for sports purposes [means] A good required for use in sports contests, demonstrations or training in the territory of the Party into whose territory the good is temporarily imported; [*]

good intended for display or demonstration includes the good's component parts, ancillary apparatus and accessories; [*]

printed advertising material [means] A good classified in Chapter 49 of the Harmonized System, including a brochure, pamphlet, leaflet, trade catalogue, yearbook published by a trade association, tourist promotional material or poster, that is:

- (a) used to promote, publicize or advertise a good or service,
- (b) essentially intended to advertise a good or service, and

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(c) supplied free of charge.][*]

Note: EC reserve on all the definitions (marked with *) associated with Articles on Temporary Admission, Duty-Free entry and Remanufactured Goods

(IV)

(V) ARTICLE 4: NATIONAL TREATMENT

(VI)

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994. To this end the obligations contained in Article III of the GATT 1994, are incorporated into and made part of this Agreement.

2. The provisions of paragraph 1 mean, with respect to a measure taken by a government in Canada other than at the federal level or by [a government of or in a European Union Member State], treatment no less favourable than that accorded by that government to like, directly competitive or substitutable goods, as the case may be, of Canada or the Member State respectively, [including jurisdictions of that government].

[CN: 3. This Article does not apply to a measure set out in Annex X.4 (Exceptions to Articles 4 and 14).]

(VII) ARTICLE 5: REDUCTION AND ELIMINATION OF CUSTOMS DUTIES ON IMPORTS

1. Each Party shall reduce or eliminate customs duties on goods originating in either Party in accordance with the Schedules set out in Annexes .. and ... (hereinafter referred to as “the Schedules”). For the purposes of this Chapter, “originating” means originating in either Party under the rules of origin set out in Annex ...

2. For each good, the base rate of customs duties, to which the successive reductions are to be applied under paragraph 1, shall be that specified in the Schedules.

3. Each Party shall apply to originating goods of the other Party the lesser of the customs duties resulting from a comparison between the rate calculated in accordance with that Party's Schedule and its applied Most Favoured Nation (MFN) rate.

4. On the request of either Party, the Parties may consult to consider accelerating and broadening the scope of the elimination of customs duties on imports between the Parties. A decision by the Parties in the [institutional body] on the acceleration or elimination of a customs duty on a good shall supersede any duty rate or staging category determined pursuant to their Schedules for that good when approved by each Party in accordance with its applicable legal procedures.

[EC: ARTICLE 6: PROHIBITION OF DRAWBACK OF, OR EXEMPTION FROM, CUSTOMS DUTIES

1. Non originating materials used in the manufacture of products originating in the European Community or in Canada for which a proof of origin is issued or made out in

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accordance with the provisions of Title V shall not be subject in the European Community or in Canada to drawback of, or exemption from, customs duties of whatever kind.

2. The prohibition in paragraph 1 shall apply to any arrangement for refund, remission or non-payment, partial or complete, of customs duties or charges having an equivalent effect, applicable in the European Community or in Canada to materials used in the manufacture, where such refund, remission or non-payment applies, expressly or in effect, when products obtained from the said materials are exported and not when they are retained for home use there.

3. The exporter of products covered by a proof of origin shall be prepared to submit at any time, upon request from the customs authorities, all appropriate documents proving that no drawback has been obtained in respect of the non-originating materials used in the manufacture of the products concerned and that all customs duties or charges having equivalent effect applicable to such materials have actually been paid.

4. The provisions of paragraphs 1 to 3 shall also apply in respect of packaging within the meaning of Article 7(2), accessories, spare parts and tools within the meaning of Article 8, and products in a set within the meaning of Article 9, when such items are non-originating.

5. The provisions of paragraphs 1 to 4 shall apply only in respect of materials which are of the kind to which the Agreement applies. Furthermore, they shall not preclude the application of an export refund system for agricultural products, applicable upon export in accordance with the provisions of the Agreement.]

(VIII)

(IX) [EC: ARTICLE 7: ELIMINATION OF CUSTOMS DUTIES ON EXPORTS

Neither Party may maintain or institute any kind of customs duty on or in connection with the exportation or sale for export of goods to the other Party, or any measures having an equivalent effect.]

(X) ARTICLE 8: STANDSTILL

1. Upon the entry into force of this Agreement neither Party may increase any customs duty existing at entry into force, or adopt any new customs duty, on a good originating in the Parties.

2. Notwithstanding this provision, a Party may:

- (a) modify a tariff outside this Agreement on a good for which no tariff preference is claimed under this Agreement;
- (b) increase a customs duty to the level established in its Schedule following a unilateral reduction; or
- (c) maintain or increase a customs duty as authorized by this Agreement or any agreement under the WTO Agreement.

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[EC: ARTICLE 9: SPECIAL PROVISIONS ON ADMINISTRATIVE CO-OPERATION]

1. The Parties agree that administrative co-operation is essential for the implementation and the control of the preferential treatment granted under this [Title] and underline their commitment to combat irregularities and fraud in customs and related matters.

2. Where a Party has made a finding, on the basis of objective information, of a failure to provide administrative co-operation and/or of irregularities or fraud under this [Title], the Party concerned may temporarily suspend the relevant preferential treatment of the product(s) concerned in accordance with this Article.

3. For the purpose of this Article a failure to provide administrative co-operation shall mean, *inter alia*:

- a) a repeated failure to respect the obligations to verify the originating status of the product(s) concerned;
- b) a repeated refusal or undue delay in carrying out and/or communicating the results of subsequent verification of the proof of origin;
- c) a repeated refusal or undue delay in obtaining authorisation to conduct administrative co-operation missions to verify the authenticity of documents or accuracy of information relevant to the granting of the preferential treatment in question.

For the purpose of this Article a finding of irregularities or fraud may be made, *inter alia*, where there is a rapid increase, without satisfactory explanation, in imports of goods exceeding the usual level of production and export capacity of the other Party, that is linked to objective information concerning irregularities or fraud.

4. The application of a temporary suspension shall be subject to the following conditions:

a) The Party which has made a finding, on the basis of objective information, of a failure to provide administrative co-operation and/or of irregularities or fraud shall without undue delay notify the [institutional body] of its finding together with the objective information and enter into consultations within the [institutional body], on the basis of all relevant information and objective findings, with a view to reaching a solution acceptable to both Parties.

b) Where the Parties have entered into consultations within the [institutional body] as above and have failed to agree on an acceptable solution within 3 months following the notification, the Party concerned may temporarily suspend the relevant preferential treatment of the product(s) concerned. A temporary suspension shall be notified to the [institutional body] without undue delay.

c) Temporary suspensions under this article shall be limited to that necessary to protect the financial interests of the Party concerned. They shall not exceed a period of six months, which may be renewed. Temporary suspensions shall be notified immediately after their adoption to the [institutional body]. They shall be subject to periodic consultations within the [institutional body] in particular with a view to their termination as soon as the conditions for their application are no longer given.

5. At the same time as the notification to the [institutional body] under paragraph 4a) of this Article, the Party concerned should publish a notice to importers in its Official Journal. The notice to importers should indicate for the product concerned that there is a finding, on the basis of objective information, of a failure to provide administrative co-operation and/or of irregularities or fraud.]

(XI) ARTICLE 10: FEES AND OTHER CHARGES

1. In accordance with Article VIII of GATT 1994, no Party may adopt or maintain a fee or charge imposed on or in connection with importation [EC: or exportation] of a good of a Party that is not commensurate with the cost of services rendered or that represents an indirect protection to domestic goods or a taxation of imports for fiscal purposes.

2. Paragraph 1 does not prevent a Party from imposing a customs duty or a charge set out in paragraphs a), b), c) [or e)] of the definition of customs duty in this agreement.

[CN: ARTICLE 11: TEMPORARY ADMISSION OF GOODS]

1. Each Party shall grant duty-free temporary admission for the following goods, regardless of their origin and regardless of whether like, directly competitive or substitutable goods are available in the territory of the Party:

- (a) professional equipment necessary for carrying out the business activity, trade or profession of a business person qualifying for temporary entry pursuant to Chapter X (Temporary Entry);
- (b) equipment for the press or for sound or television broadcasting and cinematographic equipment;
- (c) goods imported for sports purposes and goods intended for display or demonstration; and
- (d) commercial samples and advertising films and recordings;

2. A Party shall not impose a condition on the duty-free temporary admission of a good referred to in sub-paragraphs 1(a), (b) or (c), other than to require that the good:

- (a) be imported by a national or resident of the other Party who seeks temporary entry;
- (b) be used only by or under the personal supervision of that person in the exercise of the business activity, trade, profession or sport of that person;
- (c) not be sold or leased while in its territory;
- (d) be accompanied by a security in an amount no greater than the charges that would otherwise be owed on entry or final importation releasable on exportation of the good;
- (e) be capable of identification when exported;

- (f) be exported on the departure of that person or within such other period as is reasonably related to the purpose of the temporary importation; and
- (g) be imported in no greater quantity than is reasonable for its intended use.

3. A Party shall not impose a condition on the duty-free temporary admission of a good referred to in sub-paragraph 1(d), other than to require that the good:

- (a) be imported solely for soliciting of orders for:
 - i) a good of the other Party or a non-Party, or
 - ii) a service provided from the territory of the other Party or a non-Party;
- (b) not be sold, leased or used for anything other than exhibition or demonstration while in its territory;
- (c) be capable of identification when exported;
- (d) be exported within a period that is reasonably related to the purpose of the temporary importation; and
- (e) be imported in no greater quantity than is reasonable for its intended use.
- (f) be accompanied by a security in an amount no greater than the charges that would otherwise be owed on entry or final importation, releasable on exportation of the good.

4. Where a good is temporarily admitted duty-free under paragraph 1 and any condition a Party imposes under paragraph 2 or 3 has not been fulfilled, the Party may impose:

- (a) the customs duty and any other charge that would be owed on entry or final importation of the good; and
- (b) any applicable criminal, civil or administrative penalties that the circumstances may warrant.

5. Each Party, at the request of the person concerned and for reasons its customs authority considers valid, shall extend the time limit for temporary admission beyond the period initially fixed.

6. Each Party shall adopt procedures providing for the expeditious release of goods admitted under this Article. Each Party shall ensure that, to the extent possible, those procedures provide that when such a good accompanies a

national or resident of the other Party who is seeking temporary entry, the good is released with the entry of that national or resident.

7. Each Party shall permit a good temporarily admitted under this Article to be exported through a customs port other than that through which it was admitted.

8. Each Party shall provide that its customs authority or other competent authority refund the security to the importer or another person responsible for a good admitted under this Article and release the importer or the other person of liability for failure to export the good on presentation of satisfactory proof to the customs authority of the importing Party that the good has been destroyed within the original period fixed for temporary admission or any lawful extension.

9. Except as otherwise provided in this Agreement, a Party shall not:

- (a) prevent a container used in international traffic that enters its territory from the territory of the other Party to exit its territory on a route that is reasonably related to the economic and prompt departure of the container;
- (b) require a security or impose a penalty or charge only because of any difference between the port of entry and the port of departure of a container;
- (c) impose a condition on the release of an obligation, including a security, that it imposes in respect of the entry of a container into its territory on exiting through a particular port of departure; or
- (d) require that the carrier bringing a vehicle or container from the territory of the other Party into its territory be the same carrier taking the container to the territory of the other Party.]

[CN: ARTICLE 12: DUTY-FREE ENTRY OF CERTAIN COMMERCIAL SAMPLES AND PRINTED ADVERTISING MATERIALS]

Each Party shall grant duty-free entry to commercial samples of negligible value, and to printed advertising materials, imported from the territory of the other Party, regardless of their origin, but may require that:

- (a) such samples be imported solely for the solicitation of orders for:
 - i) a good of the other Party or a non-Party, or
 - ii) a service provided from the territory of the other Party or a non-Party; or

- (b) such advertising materials be imported in packets that each contain no more than one copy of each such material and that neither such materials nor packets form part of a larger consignment.]

EU working draft proposal:

Each Party shall grant duty-free entry to commercial samples of negligible value, and to printed advertising materials, [CN: regardless of their origin,] imported from the territory of the other Party[EU: ,which may be] subject to conditions defined in their own domestic law.

Both parties to consult.

[CN: ARTICLE 13: GOODS RE-ENTERED AFTER REPAIR OR ALTERATION]

1. Except as otherwise provided in Annex X.13, a Party shall not apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been temporarily exported from its territory to the territory of the other Party for repair or alteration, regardless of whether such repair or alteration could be performed in the territory of the Party from which the good was exported for repair or alteration.
2. A Party shall not apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of the other Party for repair or alteration.
3. Paragraph 1 does not apply to a good imported in bond, into foreign trade zones, or in similar status, that is exported for repair and is not re-imported in bond, into foreign trade zones, or in similar status.
4. For the purposes of this Article, repair or alteration includes the repair or alteration of parts or pieces of a good, but does not include an operation or process that either:

- (a) destroys the essential characteristics of a good or creates a new or commercially different good; or

- (b) transforms an unfinished good into a finished good.]

NOTE: EC considers this unnecessary. Reserve also on where any such provisions should appear.

(XII)

14 July: EU remains unconvinced about the necessity of integrating the article and sees the problem more a domestic Canadian.

(XIII) ARTICLE 14: IMPORT AND EXPORT RESTRICTIONS

1. Except as otherwise provided in this Agreement, neither Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of the GATT 1994 [, including its Notes and Supplementary

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Provisions]. To this end Article XI of the GATT 1994[, its Notes and Supplementary Provisions] are incorporated into and made a part of this Agreement.

NOTE: Reference to Canada's proposal Article X.07 (General Definitions).

[CN: 2. The Parties understand that the GATT 1994 rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, export price requirements and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, import price requirements.

3. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, that Party may:

(a) limit or prohibit the importation from the territory of the other Party of a good of that non-Party; or

(b) require as a condition of export of a good of the Party to the territory of the other Party that the good not be re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.]

4. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, on the request of the other Party, shall enter discussions with a view to avoiding undue interference with or distortion of pricing, marketing or distribution arrangements in the other Party.

[CN: 5. This Article does not apply to a measure set out in Annex X.4 (Exceptions to Articles 4 and 14).]

"In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, nothing in this Agreement shall be construed to prevent the Party from limiting or prohibiting the importation from the territory of the other Party of such a good of that non-Party."

(XIV)

(xv) [EC: ARTICLE 15: IMPORT LICENSING PROCEDURES

(xvi)

The parties reaffirm their rights and obligations under the WTO Agreement on Import Licensing Procedures.]

NOTE: Both sides legal reserve.

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(xvii) ARTICLE 16: REDUCTION AND ELIMINATION OF NON-TARIFF MEASURES

1. The Parties recognise the importance of reducing and eliminating non-tariff barriers to trade in goods between them.

NOTE: Pro Memoria. Text to relate to sectoral annexes, if any.

[CN: ARTICLE 17: AGRICULTURAL SUBSIDIES

1. The Parties share the objective of the multilateral elimination of agricultural export subsidies and shall work together toward an agreement in the WTO to eliminate those subsidies and avoid their reintroduction in any form.
2. A Party shall not maintain, introduce or reintroduce agricultural export subsidies on an agricultural good originating in or shipped from its territory that is exported directly or indirectly to the territory of the other Party.
3. The Parties recognize that agricultural export subsidies may also have distorting effects in third-party markets.
4. Each Party shall eliminate agricultural export subsidies on agricultural goods originating in or shipped from its territory by December 31, 2013.
5. Pending the elimination of all agricultural export subsidies, if either Party adopts or maintains an agricultural export subsidy which the other Party considers to be distortive of its trade with a non-party, the Party providing the agricultural export subsidy shall, at the request of the other Party, consult with a view to avoiding such distortionary effects.
6. The Parties agree to cooperate in WTO agricultural negotiations in order to achieve a substantial reduction of production and trade distorting domestic support.
7. If either Party maintains a production and trade distorting agriculture domestic support measure which the other Party considers to be distortive of bilateral trade under this Agreement, the Party applying the measure shall, at the request of the other Party, consult with a view to avoiding such distorting effects.]

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(XVIII)

(XIX) [EC: ARTICLE 18: INSTITUTIONAL PROVISIONS

[To be discussed at later stage on the basis of a joint assessment of global needs on institutional bodies/]

[CN: ARTICLE 18: CONSULTATIONS AND COMMITTEE ON TRADE IN GOODS AND RULES OF ORIGIN

1. The Parties establish a Committee on Trade in Goods and Rules of Origin, comprising representatives of each Party and headed by senior officials responsible for international trade matters of each Party.

2. The Committee shall meet on the request of a Party or the Commission to consider any matter arising under this Chapter, Chapter X (Rules of Origin), Chapter X (Customs Procedures), Chapter X (Trade Facilitation), Chapter X (Sanitary and Phytosanitary Measures), or Chapter X (Monopolies and State Enterprises).

3. The Committee's functions shall include:

- (a) promoting trade in goods between the Parties, including through consultations on accelerating tariff elimination under this Agreement and other issues as appropriate;
- (b) promptly addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures, and, if appropriate, referring such matters to the Commission for its consideration;
- (c) recommending to the Commission any modification of or addition to this Chapter, Chapter X (Rules of Origin), Chapter X (Customs Procedures), Chapter X (Trade Facilitation), Chapter X (Sanitary and Phytosanitary Measures), Chapter X (Monopolies and State Enterprises), or any other provision of this Agreement related to the Harmonized System; and
- (d) considering any other matter referred to it by a Party relating to the implementation and administration by the Parties of this Chapter, Chapter X (Rules of Origin), Chapter X (Customs Procedures), Chapter X (Trade Facilitation), Chapter X (Sanitary and Phytosanitary Measures), or Chapter X (Monopolies and State Enterprises).

4. The Parties hereby establish a Sub-Committee on Agriculture that shall:

- (a) meet within 90 days of a request by a Party;
- (b) provide a forum for the Parties to consult on issues resulting from the implementation of this Agreement for agricultural goods;
- (c) refer to the Committee any matter under sub-paragraph (b) on which it has been unable to reach agreement; and
- (d) report to the Committee for its consideration any agreement reached under this paragraph.

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5. On the request of a Party, the Parties shall convene a meeting of their officials responsible for customs, immigration, inspection of food and agricultural products, border inspection facilities, and regulation of transportation for the purpose of addressing issues related to movement of goods through the Parties' ports of entry.]

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[EU: Exclusions]

1. The Parties recognise that, notwithstanding [Article 14 of the Chapter on TiG] they may prohibit or restrict the import or export of products covered by this Agreement in accordance with the relevant provisions of the Agreement. In this regard, they recall that under [Article X.02 of the Chapter on exceptions] they may take restrictive measures on the basis of legitimate policy objectives, provided these measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.]

NOTE: To consider placement

[CN:

Annex X.4

Exceptions to Articles 4 (National Treatment) and 14 (Import and Export Restrictions)

Section I - Canadian Measures

Articles 4 (National Treatment) and 14 (Import and Export Restrictions) shall not apply to:

- (a) a measure, including that measure's continuation, prompt renewal or amendment, in respect of the following:
 - i. the export of logs of all species;
 - ii. the export of unprocessed fish pursuant to applicable provincial legislation;
 - iii. the importation of any goods of the prohibited provisions of tariff items 9897.00.00, 9898.00.00 and 9899.00.00 referred to in the Schedule of the *Customs Tariff* (1997, c. 36);]

NOTE: EC takes the view that any prohibitions should be symmetrical in application and challengeable under the CETA. EC will submit a proposal along these lines by round 7.

- iv. Canadian excise duties on absolute alcohol, as listed under tariff item 2207.10.90 in Canada's Schedule of Concessions annexed to the Marrakesh Protocol (Schedule V), used in manufacturing under the existing provisions of the *Excise Act, 2001*, 2002, c.22, as amended;

NOTE: Agreed.

- v. [CN: the use of ships in the coasting trade of Canada; and
- vi. the internal sale and distribution of wine and distilled spirits or

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- (b) an action by Canada authorized by the Dispute Settlement Body of the WTO in a dispute between the Parties under the WTO Agreement.]

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(xx)

(xxi) Annex X.5

(xxii) Tariff Elimination

1. As provided in the Parties' Schedules attached to this Annex, the following staging categories apply to the elimination of customs duties by each Party pursuant to Article 5 (2): *[staging categories to be negotiated]*
2. The base rate for determining the interim staged rate of customs duty for an item shall be the most favoured nation customs duty rate applied on June 9, 2009.
3. For the purpose of the elimination of customs duties in accordance with Article 5, interim staged rates shall be rounded down at least to the nearest tenth of a percentage point or, if the rate of duty is expressed in monetary units, at least to the nearest 0.001 of the official monetary unit of the Party.

Schedule of Canada

(TARIFF SCHEDULE ATTACHED AS SEPARATE VOLUME)

Schedule of the European Union

(TARIFF SCHEDULE ATTACHED AS SEPARATE VOLUME)

NOTE: Agreed in principle.

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(xxiii) [CN: Annex X.13

Goods Re-Entered after Repair or Alteration

For the following goods of HS Chapter 89 that re-enter the territory of Canada from the territory of the European Union, and are registered under the *Canada Shipping Act*, Canada may apply to the value of repair or alteration of such goods, the rate of customs duty for such goods in accordance with its Schedule to Annex X.5 (Tariff Elimination):

- 8901.10.00
- 8901.20.00
- 8901.30.00
- 8901.90.10
- 8901.90.90
- 8902.00.10
- 8904.00.00
- 8905.10.00
- 8905.20.10
- 8905.20.20
- 8905.90.10
- 8905.90.90
- 8906.10.00
- 8906.90.19
- 8906.90.90]

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B.

ROO[TITLE I

GENERAL PROVISIONS

Article 1

Definitions]

For the purposes of this [Annex:]

aquaculture means the farming of aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, from seedstock such as eggs, fry, fingerlings and larvae, by intervention in the rearing or growth processes to enhance production, such as regular stocking, feeding or protection from predators;

classified means the classification of a product under a particular heading or sub-heading of the Harmonized System;

customs value means the value as determined in accordance with the 1994 Agreement on implementation of Article VII of the General Agreement on Tariffs and Trade (WTO Agreement on customs valuation);

-product means the result of production, - even if it is intended for - use as a material in the production of another product;

Harmonized System means the Harmonized Commodity Description and Coding System (HS) -, including its General Rules of Interpretation, Section Notes, Chapter Notes and Subheading Notes;

[CAN: **listed with a Party** means a foreign registered vessel bare-boat chartered to a Canadian citizen or a permanent resident or a Canadian corporation which is listed in the Canadian Register of Ships for the duration of the charter and whose registration in the foreign country is suspended for the duration of the charter;]

material means any ingredient, component, part or - product that is used in the production-of another product;

non-originating material means a - material that does not qualify as originating under this [Chapter];

- **producer** means a person who engages in any kind of working or processing including such operations as growing, mining, raising, harvesting, fishing, trapping, hunting, manufacturing, assembling or disassembling a product;

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production means any kind of working or processing, including such operations as growing, mining, raising, harvesting, fishing, trapping, hunting, manufacturing, ~~processing~~, assembling or disassembling a product;

[CAN: **sales promotion, marketing and after-sales service costs** means the following costs related to sales promotion, marketing and after-sales service:

- (a) sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after-sales service literature (product brochures, catalogues, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;
- (b) sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;
- (c) salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), travelling and living expenses, and membership and professional fees for sales promotion, marketing and after-sales service personnel;
- (d) recruiting and training of sales promotion, marketing and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing and after-sales service of products on the financial statements or cost accounts of the producer;
- (e) product liability insurance;
- (f) office supplies for sales promotion, marketing and after-sales service of products, where such costs are identified separately for sales promotion, marketing and after-sales service of products on the financial statements or cost accounts of the producer;
- (g) telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing and after-sales service of products on the financial statements or cost accounts of the producer;
- (h) rent and depreciation of sales promotion, marketing and after-sales service offices and distribution centres;
- (i) property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centres, where such costs are identified separately for sales promotion, marketing and after-sales service of products on the financial statements or cost accounts of the producer; and
- (j) payments by the producer to other persons for warranty repairs;]

[CAN: **Total cost** means all product costs, period costs and other costs incurred in the territory of one or both of the Parties. Product costs means those costs that are associated with the production of a ~~good~~ product and include the value of materials, direct labour costs, and direct overhead. Period costs means those costs other than product costs that are expensed in the period in which they are incurred, including selling expenses and general and

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administrative expenses. Other costs means all costs recorded on the books of the producer that are not product costs or period costs.]

[CAN: **transaction value** means the price actually paid or payable for a ~~the~~ product or material with respect to a transaction of the producer of the ~~the~~ product, adjusted in accordance with the principles of paragraphs 1, 3 and 4 of Article 8 of the WTO Customs Valuation Agreement to include, *inter alia*, such costs as commissions, production assists, royalties or license fees;]

[CAN: **transaction value or ex-works price of the ~~the~~ product** includes for purposes of this definition sets of Article 12 of this [Chapter] and of [Annex X.1 (Specific Rules of Origin)], and means:

- (a) the transaction value of a product when sold by the producer at the place of production; or
- (b) the customs value of that product;

and adjusted, if necessary, to exclude any costs incurred subsequent to the product leaving the place of production, such as freight and insurance;]

transaction value or ex-works price of the product means the transaction value of a product when sold by the producer at the place of production or the customs value of that product, as determined in accordance with the Customs Valuation Agreement. If the transaction value or ex-works price of the product includes costs incurred subsequent to the product leaving the place of production, such as transportation, loading, unloading, handling or insurance, those costs are excluded from the transaction value or ex-works price of the product.

value of non-originating materials means:

- (a) the transaction value or the customs value of the material at the time of its importation into a Party, as determined in accordance with the Customs Valuation Agreement. If necessary, the value of a non-originating material is adjusted to include any costs incurred in transporting the material to the place of importation, such as transportation, loading, unloading, handling or insurance; or
- (b) in the case of a domestic transaction, the value of the material determined in accordance with the principles of the Customs Valuation Agreement in the same manner as an international transaction.

[EU: "**ex-works price**" means the price paid for the product ex-works to the manufacturer in the European Community or in Canada in whose undertaking the last working or processing is carried out, provided the price includes the value of all the materials used, minus any internal taxes which are, or may be, repaid when the product obtained is exported;]

[CAN: **value of non-originating materials** means:

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- (a) the **[transaction value]** or the customs value of the materials at the time of their importation into a Party, adjusted, if necessary, to include freight, insurance, packing and all other costs incurred in transporting the materials to the place of importation; or
- (b) in the case of domestic transactions, the value of the materials determined in accordance with the principles of the World Trade Organization's (WTO) Customs Valuation Agreement in the same manner as international transactions, with such modifications as may be required by the circumstances.]

[EU: "**value of materials**" means the customs value at the time of importation of the non-originating materials used, or, if this is not known and cannot be ascertained, the first ascertainable price paid for the materials in the European Community or in Canada;]

[EU: "**consignment**" means products which are either sent simultaneously from one exporter to one consignee or covered by a single transport document covering their shipment from the exporter to the consignee or, in the absence of such a document, by a single invoice;]

[TITLE II]

DEFINITION OF THE CONCEPT OF "ORIGINATING PRODUCTS"

Article 2

General requirements

1. For the purposes of this Agreement, a product is originating [CAN: in a Party] if, [EU: in the territory of a Party,] [CAN: in the territory of one or both of the Parties,] it:
 - a) has been wholly obtained [EU: there] within the meaning of Article 4; or,
 - b) has been produced [EU: there] exclusively from originating materials; or,
 - c) has undergone sufficient production [EU: there] within the meaning of Article 5.
2. [CAN: Except as provided for in paragraphs 4 and 5 of Article 3 (Accumulation),] the conditions set out in [this Title] relating to the acquisition of originating status must be fulfilled without interruption in the territory of [EU: a Party] [C: one or both of the Parties].

Article 3

[EU : Cumulation of origin] [CAN : Accumulation]

1. [Notwithstanding article 2,]-A product that originates in a Party shall be considered originating in the other Party when used as a material in the production of a product there, [EU: provided that the [working or processing] carried out goes beyond the operations

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referred to in Article 7 while it shall not be necessary that the materials of the other Party have undergone sufficient production.]

- 1. A product that originates in a Party shall be considered originating in the other Party when used as a material in the production of a product there [CAN: If a material that has undergone production in the territory of a Party without obtaining originating status is used in the territory of another Party in the production of an originating product, the production carried out in the territory of the first Party on that material may be taken into consideration in the territory of the other Party with respect to the originating status of the product.

2. At the time of completion of an origin declaration for a product referred to in paragraph 1, the exporter shall possess all documents provided with respect to the production carried out in the territory of another Party on that material as part of the documents supporting the originating status of the product.

3. The documents with respect to the production carried out on a non-originating material, referred to in paragraph 2, shall be completed in a legible and permanent form, signed or otherwise endorsed by the producer and describe that material in sufficient detail to be identified.

4. Subject to paragraph 6, where each Party has a trade agreement that, as contemplated by the WTO Agreement, establishes or leads to the establishment of a free trade area with the same non-Party, the territory of that non-Party shall be deemed to form part of the territory of the free trade area established by this Agreement, for purposes of determining whether a ~~good~~ product is an originating ~~[good]~~ product under this Agreement.

5. A Party shall give effect to paragraph 4 only once provisions with effect equivalent to paragraph 4 are in force between each Party and the non-Party, and upon agreement by the Parties on whether to limit such provisions to specified products or under specified conditions.]

Canada's revised proposal on cross-cumulation:

4. *Notwithstanding paragraph 2 of Article 2 (General Requirements), and subject to paragraph 5, a product will be considered as originating under this Agreement if:*

(a) *each Party has a free trade agreement or customs union, as permitted by the WTO Agreement, with the same non-Party; and*

(b) *the product is originating under the free trade agreement or customs union between a Party and the non-Party.*

5. *A Party shall give effect to paragraph 4 only once provisions with effect equivalent to paragraph 4 are in force between each Party and the non-Party and upon agreement by the Parties on the applicable conditions.*

Article 4

Wholly obtained products

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1. The following shall be considered as [EU: wholly obtained in a Party] [CAN: wholly obtained or produced entirely in the territory of one or both of the Parties]:

- (a) mineral products and other non-living natural resources extracted or taken from there;
- (b) vegetables, plants and plant products harvested or gathered there;
- (c) live animals born and raised there;
- (d) (i) products obtained from live animals there;
- (ii) products from slaughtered animals born and raised there;
- (e) (i) products obtained by hunting, trapping, fishing -conducted there;
- (ii) products of aquaculture raised there;

[EU: (f) products of sea fishing and other products taken from the sea outside any territorial sea by its vessels;]

[EU: (g) products made aboard their factory ships exclusively from products referred to in (f);]

[CAN: (f) fish, shellfish and other marine life taken from the high seas and the Area as defined in Article 1(1) of the United Nations Convention on the Law of the Sea, by a vessel registered, or listed with a Party, –and entitled to fly its flag;]

[CAN: (g) products produced on board a factory ship from the products referred to in subparagraph (f), provided such factory ship is registered, or listed with a Party, and entitled to fly its flag;]

[EU: (h) products extracted from marine soil or subsoil outside their territorial waters provided that they have sole rights to work that soil or subsoil;]

[CAN: (h) products , other than fish, shellfish and other marine life, taken or extracted from the Area as defined in Article 1(1) of the United Nations Convention on the Law of the Sea, by a vessel registered, or listed with a Party and entitled to fly its flag, or by a Party or a person of a Party, provided that Party or person of a Party has rights to exploit such seabed, subsoil or ocean floor;]

(h) [CAN: products, , other than fish, shellfish and other marine life][EU: mineral products and other non-living natural resources], taken or extracted from the seabed, subsoil or ocean floor of:

i. the exclusive economic zone of Canada or the EU's Member States, as determined by domestic law and consistent with Part V of the United Nations Convention of the Law of the Sea done at Montego Bay on 10 December 1982 (UNCLOS);

ii. the continental shelf of Canada or the EU's Member States, as determined by domestic law and consistent with Part VI of UNCLOS; or

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iii. *the Area as defined in Article 1(1) of UNCLOS,*

by a Party or a person of a Party, provided that Party or person of a Party has rights to exploit such seabed, subsoil or ocean floor;]

(i) components and raw materials recovered from used products collected there, provided the products are fit only for such recovery;

(j) waste and scrap resulting from production conducted there;

(k) products, at any stage of production, produced there exclusively from products specified in (a) to (j);

[EU: 2. The terms 'their vessels' and 'their factory ships' in paragraph 1(f) and (g) shall apply only to vessels and factory ships:

(a) which are registered in a Member State of the European Union or in Canada;

(b) which sail under the flag of a Member State of the European Union or of Canada;

(c) which meet one of the following conditions:

(i) they are at least 50% owned by nationals of a Member State of the European Union or of Canada;

or

(ii) they are owned by companies

- which have their head office and their main place of business in a Member State of the European Union or of Canada, and

- which are at least 50% owned by a Member State of the European Union or of Canada, public entities or nationals of those States;

and

6. of which at least 75% of the crew are nationals of a Member State of the European Union or of Canada.]

Article 5

Sufficient production

1. For the purposes of Article 2, products which are not wholly obtained are considered to have undergone sufficient production- when the conditions set out in [the list in Appendix II] are fulfilled.

-[CAN: 2. Except as provided in [Appendix I] or except for a product of Chapter 39 or Chapters 50 through 63 of the Harmonized System, if one or more of the non-originating materials used in the production of a product cannot satisfy the requirements set out in

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[Appendix I] because both the product and the non-originating materials are classified under the same subheading, or heading that is not further subdivided into subheadings, the product shall be considered to have undergone sufficient production, provided that:

- (i) the product is produced entirely in the territory of one or both of the Parties;
- (ii) the value of the non-originating materials classified as or with the product does not exceed [65 %] of the transaction value or ex-works price of the product; and
- (iii) the product satisfies all other applicable requirements of this [Chapter].]

1. If a non-originating material undergoes sufficient production, the resulting product shall be considered as originating and no account shall be taken of the non-originating material contained therein when that product is used in the subsequent production of another product.

[CAN: Article 6

Materials used in Production

- (a) If a non-originating material undergoes sufficient production, the resulting product shall be considered as originating and no account shall be taken of the non-originating material contained therein when that product is used in the subsequent production of another product.
- (b) For the purpose of determining the origin of a self-produced material, the value of that material is:
 - 1. the total cost incurred in the production of the self-produced material; and
 - 2. an amount for profit and sales promotion, marketing and after-sales service costs equal to that usually reflected in the sale of ~~goods~~ products of the same class or kind as the self-produced material being valued, if not already included in the total cost determined under subparagraph (a).
- (c) The amount determined under subparagraph 2(b) for a self-produced material is disregarded if, pursuant to Article X (Net Cost), that material, or a product in the production of which that material is used, is the subject of a net cost calculation.
- (d) For the purpose of paragraphs 2 and 3, a self-produced material means a material that is produced by a producer of a product and used in the production of that product .]

Article [6]

Tolerance

1. Notwithstanding Article 5(1), [CAN: and except as provided in paragraphs 2 through 4], if the non-originating materials used in the production of the product do not fulfil the conditions set out in [Annex X.1], the product may be considered to be an originating product provided that:

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(a) the total value [or, in the case of Chapters 2 and 4 through 24 of the Harmonized System other than preparations of fish of headings 16.03 through 16.05, the total weight] of those non-originating materials does not exceed 10 per cent of the [ex-works price/transaction value] [or weight] of the product;

-(b) any of the percentages given in [the list] for the maximum value [EU: or weight] of non-originating materials are not exceeded through the application of this paragraph; and

(c) the product satisfies all other applicable requirements of this [Chapter.]

[EU: This paragraph shall not apply to products falling within Chapters 50 to 63 of the Harmonized System.]

[EU: Paragraphs 1 and 2 shall apply subject to the provisions of Article 6 7.]

2. [CAN: Except as provided in Annex X.1 (Specific Rules of Origin), paragraph 1 does not apply to a non-originating material used in the production of a product of Chapters 1 through 21 of the Harmonized System unless the non-originating material is provided for in a different subheading from the product for which origin is being determined under this Article.
3. A product of any of Chapters 50 through 60, headings 63.01 through 63.05, subheading 6307.10 or 6307.90, heading 63.08 or a new rag of heading 63.10 of the Harmonized System, that does not originate because certain non-originating yarns or fabrics used in the production of the product do not fulfil the requirements set out in [Annex X-1(Specific Rules of Origin)] shall nonetheless be considered to be originating if the total weight of all such yarns or fabrics does not exceed 10 per cent of the total weight of that product .
4. For purposes of a product of Chapters 61 through 62, heading 63.06 or subheading 6307.20 of the Harmonized System, the Chapter Note of Chapter 61, 62 or 63 of [Annex X-1(Specific Rules of Origin)], whichever is applicable, shall apply.]

[EU: Article [7]]

Insufficient production

1. Without prejudice to paragraph 2, the following operations shall be considered as insufficient [working or processing] to confer the status of originating products, whether or not the requirements of Article 5 are satisfied:

- (a) preserving operations to ensure that the products remain in good condition during transport and storage;
- (b) breaking-up and assembly of packages;
- (c) washing, cleaning; removal of dust, oxide, oil, paint or other coverings;
- (d) ironing or pressing of textiles;
- (e) simple painting and polishing operations;

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- (f) husking, partial or total bleaching, polishing, and glazing of cereals and rice;
- (g) operations to colour or flavour sugar or form sugar lumps; partial or total milling of crystal sugar;
- (h) peeling, stoning and shelling, of fruits, nuts and vegetables;
- (i) sharpening, simple grinding or simple cutting;
- (j) sifting, screening, sorting, classifying, grading, matching (including the making-up of sets of articles);
- (k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- (l) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;
- (m) simple mixing of products, whether or not of different kinds; mixing of sugar with any material;
- (n) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;
- (o) a combination of two or more operations specified in (a) to (n);
- (p) slaughter of animals.

2. All operations carried out either in the European Union or in Canada on a given product shall be considered together when determining whether the [working or processing] undergone by that product is to be regarded as insufficient within the meaning of paragraph 1.

3. For the purposes of paragraph 1, operations are to be considered simple when neither special skills nor machines, apparatus or tools especially produced or installed for those operations are required for their performance.]

Article [8]

Unit of Classification

For purposes of this [Annex]:

- (a) the tariff classification of a particular product or material shall be determined according to the Harmonized System;
- (b) where a product composed of a group or assembly of articles or components is classified pursuant to the terms of the Harmonized System under a single heading or subheading -, the whole shall constitute the particular product; and
- (c) where a shipment consists of a number of identical products classified under the same heading or subheading of the Harmonized System, each product shall be considered separately.

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Article [9]

Packaging and packing materials and containers

[CAN: 1. Except as provided for in Article 12 of this [Chapter] and in [Annex X.1 (Specific Rules of Origin)], packaging materials and containers in which a product is packaged for sale shall be disregarded in determining whether all the non-originating materials used in the production of the product satisfy the requirements set out in [Annex X.1 (Specific Rules of Origin)].

[EU: 1. Where, under General Rule 5 of the Harmonized System, packaging is included with the product for classification purposes, it shall be included for the purposes of determining origin.]

2. Packing materials and containers in which a product is packed for shipment shall be disregarded in determining the origin of that product.

Article [9]

Packaging and packing materials and containers

(a) Except as provided for in Article 12 (Sets) and in [Annex X.1 (Specific Rules of Origin)], if specially shaped or fitted containers covered by General Rule 5(a) of the Harmonized System or packaging materials and containers in which a product is packaged for sale are included with the product for classification purposes, they are:

- (a) disregarded in determining whether all the non-originating materials used in the production of the product undergo the applicable change in tariff classification or other requirements set out in Annex X.1 (Specific Rules of Origin); and
- (b) included in determining whether the value of the non-originating materials does not exceed a maximum value of the transaction value [or ex-works price] of the product if the rule of origin of Annex X.1 (Specific Rules of Origin) applicable to the product contains a value test, and those specially shaped or fitted containers or packaging materials and containers are non-originating and, if invoiced separately from the product, would be classified in the same heading or subheading as that on which the value test is focused.

(b) Packing materials and containers in which a product is packed for shipment are disregarded in determining the origin of that product.

Article [10]

Accounting segregation of fungible materials [CAN: or products]

1. If originating and non-originating fungible materials are used in the -production} of a product, [CAN: or if originating and non-originating fungible products are physically

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combined or mixed in inventory in a Party and exported in the same form to the other Party,] the determination of [CAN: the origin of] the [CAN: fungible] materials [CAN: or of the fungible products] need not be made through physical separation and identification of any specific fungible material [CAN: or product], but may be determined on the basis of an inventory management system.

2. For the purposes of paragraph 1, fungible materials [CAN: or fungible products] means materials [CAN: or products] that are of the same kind and commercial quality, with the same technical and physical characteristics, and which cannot be distinguished from one another [CAN: -].
3. The inventory management system must –ensure that no more [CAN: products] receive originating status than would have been the case if the fungible materials [CAN: or fungible products] had been physically segregated.
4. [EU: A Party may require that the application of an inventory management system pursuant to this Article is subject to prior authorisation. The authorisation to use accounting segregation may be withdrawn if the producer makes improper use of it.]

Article [10]

Accounting segregation of fungible materials [CAN: or products]

1. If originating and non-originating fungible materials are used in the production of a product, [CAN: or if originating and non-originating fungible products are physically combined or mixed in inventory in a Party and exported in the same form to the other Party,] the determination of [CAN: the origin of] the [CAN: fungible] materials [CAN: or of the fungible products] need not be made through physical separation and identification of any specific fungible material [CAN: or product], but may be determined on the basis of an inventory management system.
2. The inventory management system must –ensure that no more [CAN: products] receive originating status than would have been the case if the fungible materials [CAN: or fungible products] had been physically segregated.
3. [EU: A Party may require that the application of an inventory management system pursuant to this Article is subject to prior authorisation. The authorisation to use accounting segregation may be withdrawn if the producer makes improper use of it.]
4. For the purposes of paragraphs 1 and 2:
 - (a) **fungible materials** means materials that are of the same kind and commercial quality, with the same technical and physical characteristics, and which cannot be distinguished from one another for origin purposes; and
 - [CAN: (b) **fungible products** means products that are of the same kind and commercial quality, with the same technical and physical characteristics, and which, when commingled, cannot be distinguished from one another for origin purposes by virtue of any markings or mere visual examination.]

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Article [11]

Accessories, spare parts and tools

Accessories, spare parts and tools delivered with a product that form part of its standard accessories, spare parts or tools, that are not invoiced separately from the product and which quantities and value are customary for the product, shall be:

- a) taken into account in calculating the value of the relevant non-originating materials when the rule of origin of [Appendix I] applicable to the product contains a percentage for the maximum value of non-originating materials; and
- b) disregarded in determining whether all the non-originating materials used in the production of the product undergo the applicable change in tariff classification or other requirements set out in [Annex X.1 (Specific Rules of Origin)].

Article [12]

- Sets

1. Except as provided in [Annex X.1 (Specific Rules of Origin)], a set, as referred to in General Rule 3 of the Harmonized System, -shall be considered originating, provided that:

- (a) all the component products in the set are originating; or
 - (b) where the set contains non-originating component products,
 - (i) at least one of the component products, or all the packaging materials and containers for the set, is originating; and
 - (ii) the value of the non-originating component products, does not exceed [15][50] per cent of [the transaction value or] ex-works price of the set.
2. The value of non-originating component products shall be calculated in the same manner as the value of non-originating materials.
3. The transaction value or ex-works price of the set shall be calculated in the same manner as the [transaction value] or [ex-works price] of the product .

[CAN: Sets

1. Except as provided in [Annex X.1 (Specific Rules of Origin)], a set, as referred to in General Rule 3 of the Harmonized System, shall be considered originating, provided that:

- (a) all the component products are originating; or
- (b) where the set contains non-originating component products, at least one of the component products or all the packaging materials and containers for the set, is originating; and
- (i) the value of the non-originating component products of Chapters 1 through 24 does not exceed 15 per cent of the transaction value or ex-works price of the set;

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(ii) the value of the non-originating component products of Chapters 25 through 97 does not exceed 25 per cent of the transaction value or ex-works price of the set; and

(iii) in the case of a set containing component products specified in b(i) and (ii), the value of all of the non-originating component products does not exceed 30 per cent of the transaction value or ex-works price of the set.]

2. The value of non-originating component products is calculated in the same manner as the value of non-originating materials.

3. The transaction value or ex-works price of the set shall be calculated in the same manner as the transaction value or ex-works price of the product.

Article [13]

Neutral Elements

In order to determine whether a product originates, it shall not be necessary to determine the origin of the following which might be used in its production:

(a) energy and fuel;

(b) plant and equipment;

(c) machines and tools;

(d) materials which do not enter and which are not intended to enter into the final composition of the product.

Article [14]

Transport through a Non-Party

1. A product shall not be considered to be originating by reason of having undergone production that satisfies the requirements of Article 2 if, subsequent to that production, the product :

- (a) undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading, [C: storage] or any other operation necessary to preserve it in good condition, [CAN: or any other operation] to transport the product to the territory of a Party; or
- (b) does not remain under customs control while outside the territories of the Parties.

[EU: Storage of products or consignments and splitting of consignments may take place where carried out under the responsibility of the exporter or of a subsequent holder of the products and the products remain under customs supervision in the country(ies) of transit.]

Article [15]

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[CAN: Consultation and Modifications]

1. The Parties shall consult regularly to ensure that this [Chapter] is administered effectively, uniformly and consistently with the spirit and objectives of this Agreement, and shall cooperate in the administration of this [Chapter].
2. A Party that considers that this [Chapter] requires modification to take into account developments in production processes or other matters may submit a proposed modification along with supporting rationale and any studies to the other Party for consideration and any appropriate action under [Chapter X (National Treatment and Market Access for goods)].

Article 16

Returned Originating Goods

2. If originating products exported from a Party to a non-Party return, they must be considered as non-originating, unless it can be demonstrated to the satisfaction of the customs authorities that the returning products:
 - (a) are the same as those exported;
 - and
 - (b) have not undergone any operation beyond that necessary to preserve them in good condition.

[CAN: Article X]

Net Cost

- (a) For purposes of a product of heading 87.01 through 87.08, at the choice of an exporter or a producer of such products, the value test shall be satisfied provided the value of non-originating materials used in the production of the product ~~good~~ does not exceed a given percentage of either the transaction value or ex-works price of the product, or the net cost of the product.
- (b) For the purpose of calculating the net cost of a product under paragraph 1, the producer of the product may:
 1. calculate the total cost incurred with respect to all products produced by that producer, subtract any sales promotion, marketing and after-sales service costs, royalty, shipping and packing costs, as well as a non-allowable interest cost that is included in the total cost of all those products, and then reasonably allocate the resulting net cost of those products to the product;
 2. calculate the total cost incurred with respect to all products produced by that producer, reasonably allocate the total cost to the product, and then subtract any sales promotion, marketing and after-sales service costs, royalty, shipping and packing costs and non-allowable interest cost that is included in the portion of the total cost allocated to the product; or

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3. reasonably allocate each cost that forms part of the total cost incurred with respect to the product so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalty, shipping and packing costs, or non-allowable interest cost.
- (c) For the purpose of calculating the net cost of a product under paragraph 1, the producer may average its calculation over its fiscal year using any one of the following categories, on the basis of either all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of the other Party:
- i. the same model line of motor vehicles in the same class of vehicles produced in the same plant in the territory of a Party;
 - ii. the same model line of motor vehicles produced in the same plant in the territory of a Party;
 - iii. the same model line of motor vehicles produced in the territory of a Party;
 - iv. the same class of motor vehicles produced in the same plant in the territory of a Party; or
 - v. any other category as the Parties may agree.
- (d) For the purpose of calculating the net cost under paragraph 1 with respect to a product of headings 87.06 through 87.08 produced in the same plant, the producer may:
1. average its calculation,
 1. over the fiscal year of the motor vehicle producer to whom the product is sold,
 2. over any quarter or month, provided the product was produced during the quarter or month forming the basis for the calculation; or
 3. over the automotive materials producer's fiscal year,
 1. calculate the average referred to in subparagraph (a) separately for any or all products sold to one or more motor vehicle producers; or
 2. calculate the average in subparagraph (a) or (b) separately for those products that are exported to the territory of the other Party.
- (e) For the purpose of this Article, the following definitions apply, in addition to those set out in Article 1:
1. net cost means total cost minus sales promotion, marketing and after-sales service costs, royalty, shipping and packing costs, and non-allowable interest cost that are included in the total cost;
 2. non-allowable interest cost means interest costs incurred by a producer that exceed 700 basis points above the applicable national government interest rate identified for comparable maturities;

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3. royalty means payments of any kind, including payments under technical assistance or similar agreements, made as consideration for the use or right to use any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance or similar agreements that can be related to specific services such as:
 1. personnel training, without regard to where performed; and
 - ii) if performed in the territory of one or both of the Parties, engineering, tooling, die-setting, software design and similar computer services, or other services;
4. shipping and packing costs means the costs incurred in packing a product for shipment and shipping the product from the point of direct shipment to the buyer, excluding costs of preparing and packaging the product for retail sale.]

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TITLE V

ORIGIN PROCEDURES

ARTICLE 15: PROOF OF ORIGIN

1. Products originating in the EU Party shall, on importation into Canada and products originating in Canada shall, on importation into the EU Party benefit from preferential tariff treatment of this Agreement on the basis of a declaration, subsequently referred to as the “origin declaration”.
2. The origin declaration is provided on an invoice or any other commercial document that describes the originating product in sufficient detail to enable its identification.
3. The Parties agree to periodically review Article 16, paragraph 1(a) to further liberalize or simplify the process and may, if necessary, amend the origin declaration by agreement.
4. The different linguistic versions of the text of the origin declaration appear in Annex [...]

ARTICLE 16: OBLIGATIONS REGARDING EXPORTATIONS

1. An origin declaration as referred to in Article 15 may be completed:
 - (a) in the EU:
 - (i) by an exporter within the meaning of Article 17, or
 - (ii) by any exporter for any consignment consisting of one or more packages containing originating products whose total value does not exceed EUR 6 000;
 - (b) in Canada, by an exporter as per Part V of the *Customs Act*.
2. The exporter completing an origin declaration shall at the request of the customs authority of the Party of export submit a copy of the origin declaration and all appropriate documents proving the originating status of the products concerned, including supporting documents or written statements from the producers or suppliers, as well as the fulfilment of the other requirements of this Annex.
3. Origin declarations shall be completed and signed by the exporter unless otherwise provided. However, an approved exporter within the meaning of Article 17 shall not be required to sign such declarations provided that the exporter gives the customs authority of the Party of export a written undertaking accepting full responsibility for any origin declaration which identifies the exporter as if it had been signed by this person.
4. An origin declaration may be completed by the exporter when the products to which it relates are exported, or after exportation on condition that it is presented in the importing

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Party within a period of two years or for such longer period as specified in the legislation of the importing Party after the importation of the products to which it relates.

5. The customs authority of the Party of import may allow an origin declaration to apply to multiple shipments of identical originating products that take place within a period not exceeding 12 months as specified by the exporter in that declaration.

6. An exporter who has completed an origin declaration that becomes aware or has reason to believe that the origin declaration contains incorrect information, shall immediately notify the importer in writing of any change affecting the originating status of each product to which the origin declaration applies.

7. The Parties may allow the establishment of a system that would permit, an origin declaration to be submitted electronically and directly from the exporter in the territory of one Party to an importer in the territory of another Party, including the replacement of the exporter's signature on the origin declaration with an electronic signature or identification code.

Article 17: Approved Exporter

1. For the purposes of Article 16, paragraph 1(a)(i), the customs authorities of the Party of export shall authorise any exporter who exports products under this Agreement to apply for approved exporter status for the purposes of completing an origin declaration.

2. Approved exporter status is granted, irrespective of trade flows, the value or the frequency of exports or the business duration, provided the exporter is able to:

(a) substantiate the originating status of the product being exported; and

(b) demonstrate compliance with the provisions of this annex.

3. The customs authorities shall grant to the approved exporter a customs authorisation number which shall appear on the origin declaration

4. The customs authorities shall monitor the use of the authorisation by the approved exporter.

5. Approved exporter status may be withdrawn if the exporter does not fulfill the conditions identified in paragraph 2 or the exporter misuses or abuses the authorization.

6. Under paragraph 5, where approved exporter status has been withdrawn, the customs authority of the Party of export may withhold approved exporter status until that person establishes compliance with the conditions set out in paragraph 2.

ARTICLE 18: VALIDITY OF THE ORIGIN DECLARATION

1. An origin declaration shall be valid for 12 months from the date when it was completed by the exporter, or for such longer period as determined by the Party of import. The preferential tariff treatment may be claimed within the validity period to the customs authority of the Party of import.

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2. Origin declarations which are submitted to the customs authority of the Party of import after the validity period specified in paragraph 1 may be accepted for the purpose of preferential tariff treatment in accordance with the respective laws and regulations of the Party of import.

ARTICLE 19: OBLIGATIONS REGARDING IMPORTATIONS

1. For the purpose of claiming preferential tariff treatment, the importer shall:
 - a) submit the origin declaration to the customs authority of the Party of import as required by and in accordance with the procedures applicable in that Party;
 - b) if required by the customs authority of the Party of import, submit a translation of the origin declaration; and
 - c) if required by the customs authority of the Party of import provide for a statement accompanying or as part of the import declaration to the effect that the products meet the conditions required for the application of this Agreement.
2. An importer that becomes aware or has reason to believe that an origin declaration for a product to which preferential tariff treatment has been granted contains incorrect information shall immediately notify the customs authority of the Party of import in writing of any change affecting the originating status of that product and pay any duties owing.
3. When an importer claims preferential tariff treatment for a good imported into the territory from the territory of the other Party the importing Party may deny preferential tariff treatment to the good if the importer fails to comply with any requirement under this Annex.
4. A Party shall, in accordance with its domestic legislation, provide that, where a product would have qualified as an originating product when it was imported into the territory of that Party except that the importer did not have an origin declaration at the time of importation, the importer of the product may within a period of no less than three years after the date of importation apply for a refund of duties paid as a result of the product not having been accorded preferential tariff treatment.

ARTICLE 20: PROOF RELATED TO TRANSPORT THROUGH A NON-PARTY

1. Each Party, through its customs authority, may require an importer to demonstrate that a good for which the importer claims preferential tariff treatment was shipped in accordance with Article XX (Rules of Origin – Transport Through a Non-Party) by providing:
 - a) carrier documents, including bills of lading or waybills, indicating the shipping route and all points of shipment and transshipment prior to the importation of the good; and
 - b) where the good is shipped through or transhipped outside the territories of the Parties, a copy of the customs control documents indicating to that customs authority that the good remained under customs control while outside the territories of the Parties.

ARTICLE 21: IMPORTATION BY INSTALMENTS

Where, at the request of the importer and on the conditions laid down by the customs authority of the Party of import, dismantled or non-assembled products within the meaning of

General Rule 2(a) of the HS falling within Sections XVI and XVII or headings 7308 and 9406 of the HS are imported by instalments, a single origin declaration for such products shall be submitted, as required, to that customs authority upon importation of the first instalment.

ARTICLE 22: EXEMPTIONS FROM ORIGIN DECLARATIONS

1. A Party may, in accordance with its domestic legislation, waive the requirement to present an origin declaration as referred to in Article 19, Obligations Regarding Importations, for low value shipments of originating products from another Party and for originating products forming part of the personal luggage of a traveller coming from another Party.
2. A Party may exclude any importation from the provisions of paragraph 1 when the importation is part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the requirements of this Annex related to origin declarations.
3. The Parties may set value limits for products referred to in paragraph 1, and will exchange information regarding those limits.

ARTICLE 23: SUPPORTING DOCUMENTS

The documents referred to in Article 16, Obligations Regarding Exportations, used for the purpose of proving that products covered by origin declarations can be considered as products originating in the EU Party or in Canada and fulfil the other requirements of this Protocol may include documents relating to the following:

- (f) the production processes carried out on the originating product or on materials used in the production of that product;
- (g) the purchase of, the cost of, the value of and the payment for the product;
- (h) the origin of, the purchase of, the cost of, the value of and the payment for all materials, including neutral elements, used in the production of the product; and
- (i) the shipment of the product.

ARTICLE 24: PRESERVATION OF RECORDS

1. The exporter that has completed an origin declaration shall keep a copy of the origin declaration, as well as the documents referred to in Article 23 supporting the originating status of the products, for three years after the completion of the origin declaration or for such longer period as a Party may specify.
2. Where an exporter has based an origin declaration on a written statement from the producer, the producer shall be required to maintain records in accordance with paragraph 1.
3. When provided for in domestic legislation of the Party of import, an importer that has been granted preferential tariff treatment shall keep documentation relating to the importation of the good, including a copy of the origin declaration, for three years after the date on which preferential treatment was granted, or for such longer period as that Party may specify.

4. Each Party shall permit, in accordance with that Party's laws and regulations, importers, exporters, and producers in its territory to maintain documentation or records in any medium, provided that the documentation or records can be retrieved and printed.

5. A Party may deny preferential tariff treatment to a good that is the subject of an origin verification where the importer, exporter, or producer of the good that is required to maintain records or documentation under this Article:

- (a) fails to maintain records or documentation relevant to determining the origin of the good in accordance with the requirements of the Annex; or
- (b) denies access to such records or documentation.

ARTICLE 25: DISCREPANCIES AND FORMAL ERRORS

1. The discovery of slight discrepancies between the statements made in the origin declaration and those made in the documents submitted to the customs authorities for the purpose of carrying out the formalities for importing the products shall not *ipso facto* render the origin declaration null and void if it is duly established that such document does correspond to the products submitted.

2. Obvious formal errors such as typing errors on an origin declaration should not cause this document to be rejected if these errors are not such as to create doubts concerning the correctness of the statements made in this document.

TITLE VI

ARRANGEMENTS FOR ADMINISTRATIVE CO-OPERATION

ARTICLE 26: CO-OPERATION

1. The Parties shall co-operate in the uniform administration and interpretation of the provisions of this Annex and, through their customs authorities, assist each other in verifying the originating status of the products on which an origin declaration is based.

2. In order to facilitate the verifications or assistance referred to in paragraph 1, the customs authorities of the Parties shall provide each other, through the Commission of the European Communities, with addresses of the customs authorities responsible.

3. It is understood that the customs authority of the Party of export will assume all expenses in carrying out paragraph 1.

4. It is further understood that the customs authorities of the Parties will discuss the overall operation and administration of the verification process, including forecasting of workload and discussing priorities. Where there is an unusual increase in the number of requests, the customs authorities of the Parties concerned will consult to establish priorities and consider steps to manage the workload, with consideration of operational requirements.

5. With respect to goods considered originating in accordance with Article X.X (Rules of Origin - Accumulation), the Parties may cooperate with a non-Party to develop customs procedures based on the principles of this Annex.

ARTICLE 27: ORIGIN VERIFICATION

1. In order to ensure the proper application of this Annex, the Parties shall assist each other, through the customs authorities, in verifying whether products are originating and ensuring the accuracy of claims for preferential tariff treatment.

2. Requests for origin verifications shall be made based on risk assessment methods which may include random selection or whenever the customs authority of the Party of import has reasonable doubts as to whether the product is originating and all other requirements of this Annex have been fulfilled.

3. A customs authority of the Party of import may verify whether a product is originating by:

- (a) requesting in writing that the customs authority of the Party of export conduct a verification as to whether a product is originating; and
- (b) providing the customs authority of the Party of export with:

- (i) the subject and scope of the verification and any supporting documentation relevant to the request; and
- (ii) where appropriate, a request to provide specific documentation or information relating to the request.

4. A request made by the customs authority of the Party of import pursuant to paragraph 3 shall be provided to the customs authority of the Party of export by certified or registered mail or any other method that produces a confirmation of receipt by that customs authority.

5. The origin verification shall be carried out by the customs authority of the Party of export. For this purpose, the customs authority may in accordance with its domestic legislation, request documentation, call for any evidence or visit the premises of an exporter, or a producer, to review the records referred to in Article 23 and observe the facilities used in the production of the good.

6. Where an exporter has based an origin declaration on a written statement from the producer or supplier, the exporter may arrange for the producer or supplier to provide documentation or information directly to the customs authority of the Party of export upon request.

7. As soon as possible and in any event within 12 months after receiving the request referred to in paragraph 3, the customs authority of the Party of export shall complete a verification of whether the product is originating and fulfils the other requirements of this Annex, and shall:

- a) provide to the customs authority of the Party of import:

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- i) a written report as to the results of the verification including the facts and findings and sufficient information for the Party of import to reach a decision; and
- ii) the [CAN: specific] information or documentation requested under paragraph 3(b)(ii); and

- b) subject to its domestic legislation, notify the exporter of its decision as to whether the product is originating.

8. The period referred to in paragraph 7 may be extended by agreement between the customs authorities concerned.

9. Pending the results of an origin verification under paragraph 5, the customs authority of the Party of import may suspend the granting of preferential treatment to the product concerned and shall offer to release the product to the importer, subject to any precautionary measures deemed necessary.

10. The customs authority of the Party of import shall, subject to its domestic legislation, make a decision as to whether the product is originating and notify the importer of its origin decision.

11. Where the result of an origin verification has not been provided in accordance with paragraph 7, or where the customs authority of the Party of import is unable to arrive at a decision as to whether a product is originating, that customs authority may, in cases of reasonable doubt, deny preferential tariff treatment to the product.

12. Where differences in relation to the verification procedures of this Article or in the interpretation of the rules of origin in determining whether a product qualifies as originating, cannot be resolved between the customs authority requesting the verification and the customs authority responsible for performing the verification, a Party may seek to resolve those differences within the [Customs Committee] established under this Agreement.

13. In all cases the settlement of differences between the importer and the customs authority of the Party of import shall be under the legislation of the said Party.

14. Nothing in this Annex prevents a Party from issuing a determination of origin or an advance ruling relating to any matter under consideration by the Customs Procedures Sub-Committee or the Committee on Trade in Goods and Rules of Origin or from taking such other action that it considers necessary, pending a resolution of the matter under this Agreement.

ARTICLE 28: REVIEW AND APPEAL

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1. Each Party shall grant substantially the same rights of review and appeal of determinations of origin and advance rulings issued by its customs authority as it provides to importers in its territory, to any person who:

(a) has received an origin decision in application of the provisions of this annex ; or

(b) has received an advance ruling pursuant to Article X.9.1.

2. Further to Articles X.3 (Transparency - Administrative Proceedings) and X.4 (Transparency - Review and Appeal), each Party shall provide that the rights of review and appeal referred to in paragraph 1 shall include access to at least two levels of appeal or review including at least one judicial or quasi-judicial level.

ARTICLE 29: PENALTIES

Each Party shall maintain measures imposing criminal, civil or administrative penalties for violations of its laws and regulations relating to this Annex.

ARTICLE 30: CONFIDENTIALITY

1. Nothing in this Annex shall be construed to require a Party to furnish or allow access to business information or to information relating to an identified or identifiable individual, the disclosure of which would impede law enforcement or would be contrary to that Party's legislation protecting business information and personal data and privacy.

2. Each Party shall maintain, in accordance with its law, the confidentiality of the information collected pursuant to this Annex and shall protect that information from disclosure that could prejudice the competitive position of the persons providing the information. Where the Party receiving or obtaining information is required by its laws to disclose the information, that Party shall notify the Party or person who provided that information.

3. Each Party shall ensure that the confidential information collected pursuant to this Annex shall not be used for purposes other than the administration and enforcement of determinations of origin and of customs matters, except with the permission of the person or Party who provided the confidential information.

4. Notwithstanding paragraph 3, a Party may allow information collected pursuant to this Annex to be used in any administrative, judicial or quasi-judicial proceedings instituted for failure to comply with customs related laws and regulations implementing this Annex. A Party shall notify the person or Party who provided the information in advance of such use.

5. The Parties shall exchange information on their respective legislation on data protection for the purpose of facilitating the operation and application of paragraph 2.

ARTICLE 31: ADVANCE RULINGS RELATING TO ORIGIN

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1. Each Party shall through its customs authority, provide for the expeditious issuance of written advance rulings, prior to the importation of a good into its territory, to an [EU: operator] importer in its territory [CAN: or an exporter or a producer in the territory of another Party], on the basis of the facts and circumstances presented by such importer, exporter or producer of the good, concerning whether a good qualifies as an originating good under this Annex.
2. Each Party shall adopt or maintain procedures for the issuance of advance rulings, including a detailed description of the information reasonably required to process an application for a ruling.
3. Each Party shall provide that its customs authority:
 - (a) may, at any time during the course of an evaluation of an application for an advance ruling, request supplemental information from the person requesting the ruling;
 - (b) shall, after it has obtained all necessary information from the person requesting the advance ruling, issue the ruling within 120 days; and
 - (c) shall provide to the person requesting the advance ruling a full explanation of the reasons for the ruling.
4. Where application for an advance ruling involves an issue that is the subject of:
 - (a) a verification of origin;
 - (b) a review by or appeal to the customs authority; or
 - (c) judicial or quasi-judicial review in its territory;

the customs authority in accordance with its laws and regulations, may decline or postpone the issuance of the ruling.
5. Subject to paragraph 7, each Party shall apply an advance ruling to importations into its territory of the good for which the ruling was requested, beginning on the date of its issuance or such later date as may be specified in the ruling.
6. Each Party shall provide to any person requesting an advance ruling the same treatment as it provided to any other person to whom it issued an advance ruling, provided that the facts and circumstances are identical in all material respects.
7. The issuing Party may modify or revoke an advance ruling:
 - a) if the ruling is based on an error of fact;
 - b) if there is a change in the material facts or circumstances on which the ruling is based;

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c) to conform with an amendment of Chapter X (National Treatment and Market Access for Goods), or this Annex; or

d) to conform with a judicial decision or a change in its domestic law.

8. Each Party shall provide that any modification or revocation of an advance ruling shall be effective on the date on which the modification or revocation is issued, or on such later date as may be specified therein, and shall not be applied to importations of a good that have occurred prior to that date, unless the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions.

9. Notwithstanding paragraph 8, the issuing Party may, in accordance with its domestic legislation, postpone the effective date of such modification or revocation for no more than 6 months.

10. Subject to paragraph 7, each Party shall provide that an advance ruling remains in effect and is honoured.

ARTICLE 32: DEFINITIONS

For purposes of this Annex:

customs authority means any governmental authority that is responsible under the law of a Party for the administration and application of customs laws and regulations or for the EU, where provided for, the competent services of the Commission of the European Union;

determination of origin means a determination as to whether a good qualifies as an originating good in accordance with this Annex;

exporter means an exporter located in the territory of a Party ;

identical originating products means products that are the same in all respects, including physical characteristics, quality and reputation, irrespective of minor differences in appearance that are not relevant to a determination of origin of those products under this Annex;

importer means an importer located in the territory of a Party;

[EU: SECTION C
CEUTA AND MELILLA

TITLE VII
CEUTA AND MELILLA

ARTICLE 33: APPLICATION OF THE PROTOCOL

1. The term “EU Party” does not cover Ceuta and Melilla.

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2. Products originating in Canada, when imported into Ceuta or Melilla, shall enjoy in all respects the same customs regime as that which is applied to products originating in the customs territory of the Community under Protocol 2 of the *Act of Accession of the Kingdom of Spain and the Portuguese Republic to the European Communities*. Canada shall grant to imports of products covered by this Agreement and originating in Ceuta and Melilla the same customs regime as that which is granted to products imported from and originating in the EU Party.

3. For the purpose of the application of paragraph 2 concerning products originating in Ceuta and Melilla, this Protocol shall apply *mutatis mutandis* subject to the special conditions set out in Article 32.

ARTICLE 34: SPECIAL CONDITIONS

1. Providing they have been transported directly in accordance with the provisions of Article 13, the following shall be considered as:

- (c) products originating in Ceuta and Melilla:
 - (ii) products wholly obtained in Ceuta and Melilla; or
 - (iii) products obtained in Ceuta and Melilla in the manufacture of which products other than those referred to in subparagraph (a)(i) are used, provided that:
 - (A) the said products have undergone sufficient working or processing within the meaning of Article 5; or
 - (B) those products originate in a Party, provided that they have been submitted to working or processing which goes beyond the operations referred to in Article 6.
- (d) products originating in Canada:
 - (i) products wholly obtained in Canada; or
 - (ii) products obtained in Canada, in the manufacture of which products other than those referred to in subparagraph(b)(i) are used, provided that:
 - (A) the said products have undergone sufficient working or processing within the meaning of Article 5; or
 - (B) those products originate in Ceuta and Melilla or in the EU Party, provided that they have been submitted to working or processing which goes beyond the operations referred to in Article 6.

2. Ceuta and Melilla shall be considered as a single territory.

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3. The exporter or his authorised representative shall enter “Canada” or “Ceuta and Melilla” on origin declarations.
4. The Spanish customs authorities shall be responsible for the application of this Protocol in Ceuta and Melilla.]

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**ANNEX [...]
TEXT OF THE ORIGIN DECLARATION**

The origin declaration, the text of which is given below, must be completed in accordance with the footnotes. However, the footnotes do not have to be reproduced.

(Period: from _____ to _____¹⁾)

The exporter of the products covered by this document (customs authorization No ...²⁾ declares that, except where otherwise clearly indicated, these products are of ...³ preferential origin.

..... 4
(Place and date)
..... 5
(Signature and printed name of the exporter)

1 When the origin declaration is completed for multiple shipments of identical originating products within the meaning of Article 16, paragraph 6, indicate the period for which the origin declaration will apply. The period shall not exceed 12 months. All importations of the product must occur within the period indicated. Where a period is not applicable, the field can be left blank.

2 **For EU exporters:** When the origin declaration is completed by an approved exporter within the meaning of Article 17, the exporter's customs authorization number shall be included. A customs authorization number is required only where the exporter is an approved exporter. When the origin declaration is not completed by an approved exporter, the words in brackets shall be omitted or the space left blank.

For Canadian exporters: The exporter's Business Number assigned by the Canada Revenue Agency shall be included.

3 "Canada/EU" means [products] qualifying as originating under the rules of origin of the Canada-European Union Comprehensive Economic and Trade Agreement. For the purposes of when the origin declaration relates, in whole or in part, to products originating in Ceuta and Melilla, the exporter must clearly indicate the symbol "CM".

4 These indications may be omitted if the information is contained on the document itself.

5 Article 16 provides an exception to the requirement of the exporter's signature. Where the exporter is not required to sign, the exemption of signature also implies the exemption of the name of the signatory.

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Bulgarian version

Износителят на продуктите, обхванати от този документ (митническо разрешение № ... (1)) декларира, че освен където е отбелязано друго, тези продукти са с ... преференциален произход (2).

Spanish version

El exportador de los productos incluidos en el presente documento (autorización aduanera n° ... (1)) declara que, salvo indicación en sentido contrario, estos productos gozan de un origen preferencial ... (2).

Czech version

Vývozce výrobků uvedených v tomto dokumentu (číslo povolení ... (1)) prohlašuje, že kromě zřetelně označených, mají tyto výrobky preferenční původ v ... (2).

Danish version

Eksportøren af varer, der er omfattet af nærværende dokument, (toldmyndighedernes tilladelse nr. ... (1)), erklærer, at varerne, medmindre andet tydeligt er angivet, har præferenceoprindelse i ... (2).

German version

Der Ausführer (Ermächtigter Ausführer; Bewilligungs-Nr. ... (1)) der Waren, auf die sich dieses Handelspapier bezieht, erklärt, dass diese Waren, soweit nicht anderes angegeben, präferenzbegünstigte ... (2) Ursprungswaren sind.

Estonian version

Käesoleva dokumendiga hõlmatud toodete eksportija (tolliameti kinnitus nr. ... (1)) deklareerib, et need tooted on ... (2) sooduspäritoluga, välja arvatud juhul kui on selgelt näidatud teisiti.

Greek version

Ο εξαγωγέας των προϊόντων που καλύπτονται από το παρόν έγγραφο (άδεια τελωνείου υπ' αριθ. ... (1)) δηλώνει ότι, εκτός εάν δηλώνεται σαφώς άλλως, τα προϊόντα αυτά είναι προτιμησησιακής καταγωγής ... (2).

English version

The exporter of the products covered by this document (customs authorization No ... (1)) declares that, except where otherwise clearly indicated, these products are of ... (2) preferential origin.

French version

L'exportateur des produits couverts par le présent document (autorisation douanière n° ... (1)) déclare que, sauf indication claire du contraire, ces produits ont l'origine préférentielle ... (2).

Italian version

L'esportatore delle merci contemplate nel presente documento (autorizzazione doganale n. ... (1)) dichiara che, salvo indicazione contraria, le merci sono di origine preferenziale ... (2).

Latvian version

Eksportētājs produktiem, kuri ietverti šajā dokumentā (muitas pilnvara Nr. ... (1)), deklarē, ka, izņemot tur, kur ir citādi skaidri noteikts, šiem produktiem ir priekšrocību izcelsme no ... (2).

Lithuanian version

Šiame dokumente išvardintų prekių eksportuotojas (muitinės liudijimo Nr. ... (1)) deklaruoja, kad, jeigu kitaip nenurodyta, tai yra ... (2) preferencinės kilmės prekės.

Hungarian version

A jelen okmányban szereplő áruk exportőre (vámfelhatalmazási szám: ... (1)) kijelentem, hogy eltérő jelzés hiányában az áruk kedvezményes ... (2) származásúak.

Maltese version

L-esportatur tal-prodotti koperti b'dan id-dokument (awtorizzazzjoni tad-dwana nru. ... (1)) jiddikjara li, hlief fejn indikat b'mod ċar li mhux hekk, dawn il-prodotti huma ta' oriġini preferenzjali ... (2).

Dutch version

De exporteur van de goederen waarop dit document van toepassing is (douanevergunning nr. ... (1)), verklaart dat, behoudens uitdrukkelijke andersluidende vermelding, deze goederen van preferentiële ... oorsprong zijn ... (2).

Polish version

Eksporter produktów objętych tym dokumentem (upoważnienie władz celnych nr ... (1)) deklaruje, że z wyjątkiem gdzie jest to wyraźnie określone, produkty te mają ... (2) preferencyjne pochodzenie.

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Portuguese version

O abaixo assinado, exportador dos produtos cobertos pelo presente documento (autorização aduaneira n.º ...⁽¹⁾), declara que, salvo expressamente indicado em contrário, estes produtos são de origem preferencial ...⁽²⁾.

Romanian version

Exportatorul produselor ce fac obiectul acestui document (autorizația vamală nr. ...⁽¹⁾) declară că, exceptând cazul în care în mod expres este indicat altfel, aceste produse sunt de origine preferențială ...⁽²⁾.

Slovenian version

Izvoznik blaga, zajetega s tem dokumentom (pooblastilo carinskih organov št ...⁽¹⁾) izjavlja, da, razen če ni drugače jasno navedeno, ima to blago preferencialno ...⁽²⁾ poreklo.

Slovak version

Vývozca výrobkov uvedených v tomto dokumente (číslo povolenia ...⁽¹⁾) vyhlasuje, že okrem zreteľne označených, majú tieto výrobky preferenčný pôvod v ...⁽²⁾.

Finnish version

Tässä asiakirjassa mainittujen tuotteiden viejä (tullin lupa n:o ...⁽¹⁾) ilmoittaa, että nämä tuotteet ovat, ellei toisin ole selvästi merkitty, etuuskohteluun oikeutettuja ... alkuperä tuotteita.⁽²⁾

Swedish version

Exportören av de varor som omfattas av detta dokument (tullmyndighetens tillstånd nr. ...⁽¹⁾) försäkrar att dessa varor, om inte annat tydligt markerats, har förmånsberättigande ... ursprung.⁽²⁾

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[EU: JOINT DECLARATION

concerning the Principality of Andorra

1. Products originating in the Principality of Andorra falling within Chapters 25 to 97 of the Harmonised System shall be accepted by Canada as originating in the Community within the meaning of this Agreement.
2. Protocol 6 shall apply *mutatis mutandis* for the purpose of defining the originating status of the above-mentioned products.

JOINT DECLARATION

concerning the Republic of San Marino

1. Products originating in the Republic of San Marino shall be accepted by Canada as originating in the Community within the meaning of this Agreement.
2. Protocol 6 shall apply *mutatis mutandis* for the purpose of defining the originating status of the above-mentioned products.]

CUSTOMS AND TRADE FACILITATION

Article X-1: Objectives and Principles

1. The Parties acknowledge the importance of customs and trade facilitation matters in the evolving global trading environment.
2. The Parties shall to the extent possible cooperate and exchange information, including information on best practices, for the purpose of promoting the application of and compliance with the trade facilitation measures agreed upon under this Agreement.
3. The Parties agree that measures to facilitate trade shall not hinder mechanisms to protect persons through effective enforcement of and compliance with national requirements.
4. The Parties agree that import, export and transit requirements and procedures shall be no more administratively burdensome or trade restrictive than necessary to achieve legitimate objectives.
5. The Parties agree that international trade and customs instruments and standards shall be the basis for import, export and transit requirements and procedures, where such instruments and standards exist, except where they would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued.

Article X-2: Transparency

1. Each Party shall publish or otherwise make available, including through electronic means, all their legislation, regulations, judicial decisions and administrative policies—relating to its requirements for imported or exported goods.
2. Each Party shall endeavour to make public, including on the internet, any regulations and administrative policies governing customs matters that it proposes to adopt and provide interested persons the opportunity to comment prior to their adoption.
3. Each Party shall designate or maintain one or more contact points to address inquiries by interested persons concerning customs matters and make available on the internet information concerning the procedures for making such inquiries.

Article X-3: Release of Goods

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties and reduce costs for importers and exporters. Such procedures:
 - (a) shall allow for the release of goods within a period no greater than that required to ensure compliance with its Canadian domestic law and EU or EU Member States' legislation.
 - (b) may require the submission of more extensive information through post-entry accounting and verifications, as appropriate;

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- (c) shall allow goods, and to the greatest extent possible controlled or regulated goods, to be released at the first point of arrival ;
- (d) shall endeavour to allow for the expeditious release of goods in need of emergency ;
- (e) shall allow an importer or its agent to remove goods from custom's control prior to the final determination and payment of customs duties, taxes, and fees. Before releasing the goods, a Party may require that an importer provide sufficient guarantee in the form of a surety, a deposit, or some other appropriate instrument
- (f) provide for, in accordance with Canadian domestic law and EU or EU Member States legislation simplified documentation requirements for the entry of low-value goods as determined by that Party

[C New paragraph:]

2. Each Party shall allow for the expedited release of goods and, to the extent possible or where applicable, shall:
 - (a) provide for advance electronic submission and processing of information before physical arrival of goods to enable their release upon arrival, where no risk has been identified or where no random checks are to be performed and
 - (b) provide for clearance of certain goods with a minimum of documentation.
3. Each Party shall, to the extent possible, ensure that its authorities and agencies involved in border and other import and export controls cooperate and coordinate to facilitate trade by, inter alia, converging import and export data and documentation requirements, and establishing a single location for one-time documentary and physical verification of consignments.
4. Each Party shall ensure, to the greatest extent possible, that the requirements of its agencies related to the import and export of goods are coordinated to facilitate trade, regardless of whether these requirements are administered by an agency or on behalf of that agency by the customs administration.

Article X-4- Customs Valuation

1. The Agreement on the Implementation of Article VII of the GATT (1994) shall govern customs valuation applied to reciprocal trade between the parties.
2. The parties shall cooperate with a view to reaching a common approach to issues relating to customs valuation.

ARTICLE X-5: Classification of Goods

The classification of goods in trade between the Parties shall be that set out in each Party's respective tariff nomenclature in conformity with the International Convention on the Harmonized Commodity Description and Coding System.

Article X-6: Fees and Charges

Each Party shall publish or otherwise make available information on fees and charges imposed by a customs administration, including through electronic means. This information shall include the applicable fees and charges, the specific reason for the fee or charge, the responsible authority and when and how payment is to be made. A Party shall not impose new or amended fees and charges until it publishes or otherwise makes available this information.

Article X-7: Risk Management

1. Each Party shall base its examination and release procedures and its post-entry verification procedures on risk assessment principles, rather than examining each shipment offered for entry in a comprehensive manner for compliance with all import requirements.
2. The Parties agree to adopt and apply their import, export and transit requirements and procedures for goods on the basis of risk management principles, to be applied to focus compliance measures on transactions that merit attention.
2. The above shall not preclude a Party from conducting quality control and compliance reviews, which may require more extensive examinations.

Article X- 8: Automation

1. Each Party shall use information technologies that expedite domestic procedures for the release of goods in order to facilitate trade including trade between the Parties.
2. Each Party shall:
 - a) endeavour to make available by electronic means customs forms that are required for the import or export of goods;
 - b) allow, subject to Canadian domestic law or EU or EU Member States' legislation, those customs forms to be submitted in electronic format; and
 - c) where possible, through its customs administration, establish a means of providing for the electronic exchange of information with its trading community.
3. Each Party shall endeavour to:
 - a) develop or maintain fully interconnected single window systems to facilitate a single, electronic submission of all information required by customs and non-customs legislation for cross-border movements of goods; and
 - b) develop a set of data elements and processes in accordance with the WCO Data Model and related WCO recommendations and guidelines.

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4. The Parties shall endeavour to cooperate on the development of interoperable electronic systems, including taking account of the work at the WCO, in order to facilitate trade between the Parties.

[C: Article X-9: Advance Rulings for Tariff Classification]

1. Subject to Chapter X (Customs Procedures), a Party shall issue a written ruling prior to an importation in response to a written request by an importer in its territory, exporter or producer in the territory of the other Party, or their respective representatives.
2. A Party shall issue these rulings for tariff classification or rate of customs duty, except any form of surtax or surcharge, applicable upon importation;
3. For the purposes of paragraph 1, the issuance of advance rulings shall be administered in the same manner as the procedures set out in Article X.9 (Advance Rulings – Customs Procedures).]

[EU: Article X-9- Advance Rulings]

1. Each Party shall issue upon written request advance rulings on tariff classification in accordance with its legislation.
2. Subject to any confidentiality requirements and in accordance with its legislation, each Party shall publish, (e.g. on the Internet), its advance rulings on tariff classification.
3. To facilitate trade, the Parties shall include in their bilateral dialogue regular updates on changes in their respective legislation and its implementation on the matters referred to in paragraphs 1 and 2.]

Article X-10: Review and Appeal

1. Each Party shall ensure that any administrative action or official decision taken in respect of the import of goods is reviewable promptly by judicial, arbitral or administrative tribunals or through administrative procedures.
2. Such tribunal or official acting pursuant to such administrative procedures shall be independent of the official or office issuing the decision and shall have the competence to maintain, modify or reverse the determination, in accordance with the Party's domestic law.
3. Each Party shall provide for an administrative level of appeal or review, independent of the official or, where applicable, the office responsible for the original action or decision, before requiring a person to seek redress at a more formal or judicial level.
4. Each Party shall grant substantially the same rights of review and appeal of determinations of advance rulings by its customs administration as it provides to importers in its territory to any person who has received an advance ruling pursuant to Article X-6 (Advance Rulings for Tariff Classification).

Article X-11: Penalties

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Each Party shall ensure that its respective customs laws and regulations provide that any penalties imposed for breaches of customs regulations or procedural requirements be proportionate and non-discriminatory and, in their application, do not result in unwarranted delays.

Article X-12: Confidentiality

1. Each Party shall, in accordance with the Canadian domestic law and EU and EU Member States' legislation, treat as strictly confidential all information obtained pursuant to this Chapter that is by its nature confidential or that is provided on a confidential basis and shall protect that information from disclosure that could prejudice the competitive position of the person providing the information.
2. Where the Party receiving or obtaining information is required by its laws to disclose the information, that Party shall notify the Party or person who provided the information.
3. Each Party shall ensure that the confidential information collected pursuant to this Chapter shall not be used for purposes other than the administration and enforcement of customs matters, except with the permission of the person or Party who provided the confidential information.
4. A party may allow information collected pursuant to this Chapter to be used in any administrative, judicial or quasi-judicial proceedings instituted for failure to comply with customs-related laws and regulations implementing this Chapter. A Party shall notify the person or Party who provided the information in advance of such use.

Article X-13: Cooperation

1. The Parties shall continue to cooperate in international fora, such as the World Customs Organization (WCO), to achieve mutually-recognized goals, such as those set out in the *WCO Framework of Standards to Secure and Facilitate Global Trade*.
2. The Parties shall regularly review relevant international initiatives on trade facilitation, including the Compendium of Trade Facilitation Recommendations, developed by the United Nations Conference on Trade and Development and the United Nations Economic Commission for Europe, to identify areas where further joint action would facilitate trade between the Parties and promote shared multilateral objectives.
3. The Parties agree to cooperate in accordance with the 1998 Agreement between Canada and the European Community on Customs Cooperation and Mutual Assistance in Customs Matters, including future amendments thereto.

[Article X-14: Committee]

Placeholder text: Reference to a possible Committee pending the outcome of the placement of the CETA committee structure for goods.]

C.

CHAPTER XX: TECHNICAL BARRIERS TO TRADE (TBT)

Article 1: Affirmation of the WTO TBT Agreement

The Parties affirm their rights and obligations under the WTO Agreement on Technical Barriers to Trade (hereinafter referred to as the “TBT Agreement”) [EC: which is hereby incorporated into and made part of this Agreement.]

Article 2: Scope and Definitions

This Chapter applies to the preparation, adoption and application of technical regulations, standards and conformity assessment procedures of all levels of government that may affect trade in goods between the Parties. With respect to non-government bodies within their territories the Parties shall take such reasonable measures as may be available to them to ensure compliance with the provisions of this Chapter.

2. This Chapter does not apply to:

- (a) purchasing specifications prepared by a governmental body for production or consumption requirements of governmental bodies ; or
- (b) sanitary and phytosanitary measures as defined in Annex A of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

3. For purposes of this Chapter, the definitions of Annex I to the TBT Agreement shall apply.

Article 3: Joint Co-operation

The Parties shall strengthen their joint co-operation in the areas of technical regulations, standards, metrology, conformity assessment, market surveillance or monitoring and enforcement activities with a view to facilitating the conduct of trade between the Parties, as laid down in Chapter XXX (*Regulatory Co-operation*). This may include promoting and encouraging co-operation between their respective public or private organizations responsible for metrology, standardization, testing, certification and accreditation, market surveillance or monitoring and enforcement activities; and in particular, encouraging their accreditation and conformity assessment bodies to participate in co-operation arrangements that promote the acceptance of conformity assessment results.

Article 4: Technical Regulations

1. The Parties undertake to co-operate as far as possible to ensure that their technical regulations are compatible. To this end, if a Party expresses an interest in developing a technical regulation equivalent or similar in scope to one existing in or being prepared by the other Party, the other Party shall on request provide, to the extent practicable, the relevant information, studies, and data upon which it has relied in the development of its technical regulation. The Parties recognize that it may be necessary to clarify and agree on the scope of a specific request, and that confidential information may be withheld.

2. A Party that has prepared a technical regulation that it considers to be equivalent to a technical regulation of the other Party having compatible objective and product scope may

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request in writing that the other Party recognise it as equivalent. Such written request shall set out the reasons why the scopes and provisions of the technical regulations are considered to be equivalent. If the other Party does not agree that the technical regulations are equivalent, it shall on request explain its decision.

Article 5: Conformity Assessment

[CN: 1. If a Party does not accept the results of a conformity assessment procedure conducted in the territory of the other Party, it shall, on request of the other Party, explain the reasons for its decision.

2. Each Party shall accredit, approve, designate, notify, license or otherwise recognize conformity assessment bodies in the territory of the other Party on terms no less favourable than those accorded to conformity assessment bodies in its territory.

3. Further to paragraph 2, a Party shall not require conformity assessment bodies in the territory of the other Party to establish a legal or physical presence in its own territory as a pre-condition to accrediting, approving, designating, notifying, licensing or otherwise recognizing said bodies.

4. Where a Party's regulatory authority relies entirely on accreditation to establish the technical competence of conformity assessment bodies, it shall rebuttably presume conformity assessment bodies in the territory of the other Party to be technically competent if they are accredited by an accreditation body which is signatory to:

a) the International Laboratory Accreditation Cooperation (ILAC);

b) the International Accreditation Forum (IAF); or

c) a cooperation agreement or arrangement between accreditation bodies in the territory of the Parties.]

[EC: 5. The Agreement on mutual recognition between the European Community and Canada, signed in London on 14 May 1998 ("the MRA"), is hereby incorporated into and made part of this Agreement as a Protocol thereto. The [institutional body] shall assume the responsibilities of the Joint Committee referred to in Article XI of the MRA.]

Depends on outcome of discussions on paras 1-4

Article 6: Transparency

1. Each Party shall ensure that transparency procedures regarding the development of technical regulations and conformity assessment procedures allow interested parties to participate at an early appropriate stage when amendments can still be introduced and comments taken into account, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise. Where a consultation process on the development of technical regulations and or conformity assessment procedures is open to the public, each Party shall permit persons of the other Party to participate on terms no less favourable than those accorded to its own persons.

2. The parties shall promote closer cooperation between the standardization organizations located within their territories with a view to facilitating, *inter alia*, the exchange of

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information about their respective activities, as well as the harmonization of standards based on mutual interest and reciprocity, according to modalities to be agreed by the standardization organizations concerned.

(Parties will return to their standards bodies for an update on progress on current discussion before the completion of the negotiations.)

[CN: 3. Each Party shall transmit electronically to the other Party's contact point, established under Article 10 of the TBT Agreement at the same time it submits its notification to the WTO Central Registry of Notifications in accordance with the TBT Agreement:

(a) its proposed technical regulations and conformity assessment procedures, including those that are in accordance with the technical content of the relevant international standards and that may have an effect on trade; and

(b) its technical regulations and conformity assessment procedures adopted to address urgent problems of safety, health, environmental protection or national security arising or threatening to arise.]

4. The transmission of technical regulations and conformity assessment procedures [CN: made pursuant to paragraphs 3] shall include an electronic link to, or a copy of, the full text of the document.

5. [CN: Further to subparagraph 3(a), e] Each Party shall endeavour to allow a period of at least 60 days following transmission of proposed technical regulations and conformity assessment procedures for the public and the other Party to provide written comments. A Party shall give positive consideration to a reasonable request for extending the comment period.

EC legal scrutiny reserve on change to paragraph 5.

[CN: 6. Where a Party has conducted an impact assessment of a proposed technical regulation or conformity assessment procedure, upon request from the other Party, it shall provide relevant information pertaining to its impact assessment including, to the greatest extent practicable:

a) the methodology for the impact assessment and any related testing or studies;

b) data employed in the preparation of the impact assessment; and

c) the findings of the impact assessment including the Party's assessment of the risk or hazard in question.]

7. (i) Where a Party has received comments on its proposed technical regulations or conformity assessment procedures from the other Party, it shall reply in writing to such comments before adoption of the final technical regulation or conformity assessment procedure.

(ii) Each Party shall publish or otherwise make publicly available, in print or electronically, its responses or a summary of its responses, to significant comments it receives, no later than the date it publishes the final technical regulation or conformity assessment procedure.

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8. Each Party shall, upon request of the other Party, provide information regarding the objectives of, and rationale for, a technical regulation or conformity assessment procedure, that the Party has adopted or is proposing to adopt.

9. A Party shall give positive consideration to a reasonable request from the other Party, received prior to the end of the comment period following the transmission of a proposed technical regulation, to establish or extend the period of time between the adoption of the technical regulation and the day upon which it is applicable, except where such delay would be ineffective in fulfilling the legitimate objectives pursued.

10. Each Party shall ensure that its adopted technical regulations and conformity assessment procedures are publicly available on official websites.

11. Where a Party detains at a port of entry a good imported from the territory of the other Party on the grounds that the good has failed to comply with a technical regulation, it shall without undue delay notify the importer of the reasons for the detention of the goods.

Article 7: Marking and Labelling

With respect to technical regulations relating to labeling or marking requirements, the Parties shall ensure they are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, such labeling or marking requirements shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks that non-fulfillment would create.

Article 8: [EU: Management of this Chapter] [CN: Canada-EU CETA Committee on Technical Barriers to Trade]

[EU: 1. The Parties agree to co-operate in the matters covered by this Chapter. In particular, they agree:]

[CN: 1. The Parties hereby establish a Canada-EU CETA Committee on Technical Barriers to Trade (herein referred to as the “Canada-EU CETA TBT Committee”), comprised of trade and relevant regulatory officials, as set out in Annex X.X.

2. The Canada-EU CETA TBT Committee’s functions include:]

(a) to monitor the implementation of this chapter;

(b) promptly to address any issue that a Party raises [under this Chapter or the TBT Agreement,] related to the development, adoption or application of standards, technical regulations or conformity assessment procedures;

[CN: (c) on a Party’s request, facilitating discussion of the assessment of risk or hazard conducted by the other Party, or the chosen level of protection related to a given measure;]

(d) to encourage cooperation between the standards and conformity assessment bodies of the Parties;

(e) facilitating requests made by either Party for their technical regulations, [CN: the results of conformity assessment procedures, or conformity assessment bodies to be accepted or] recognised in the territory of the other Party;

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(f) to exchange information on standards, technical regulations, and conformity assessment procedures including those of third parties or international bodies where there is a mutual interest in doing so;

(g) reviewing this Chapter in the light of any developments in the WTO TBT Committee or under the TBT Agreement, and, if necessary, developing recommendations for amendments to this Chapter [for consideration by the [CETA Trade Council]]⁶;

(h) taking any other steps that the Parties consider will assist them in implementing this Chapter and the TBT Agreement and in facilitating trade between the Parties.

[CN: (i) reporting to the [CETA Trade Council] on the implementation of this Chapter as appropriate;]

Depending upon the outcome of the discussions on the committee structure.

3. Where a matter covered under this [Chapter or the TBT Agreement] cannot be clarified or resolved through the [Canada-EU CETA TBT Committee], the Parties may establish ad hoc technical working groups with a view to identifying workable and practical solutions that would facilitate trade. Such groups shall be jointly led by the Parties. Where a Party declines a request from the other Party to establish a working group, it shall, on request, explain the reasons for its decision.

4. Any information that is provided at the request of a Party pursuant to the provisions of this Chapter shall be provided in print or electronically within a reasonable period of time. A Party shall endeavour to respond to each such request within 60 days.

[CN: 5 Each Party is responsible for ensuring that the relevant institutions and persons in its territory participate, as appropriate, in the activities related to this Chapter and for coordinating such participation. The Canada-EU CETA TBT Committee shall meet once a year unless the Parties otherwise agree. The Canada-EU CETA TBT Committee shall carry out its work through communication channels agreed to by the Parties, which may include electronic mail, videoconferencing or other means.]

The Parties note that the need for this paragraph is tied to the ultimate decisions on institutional provisions.

[CN: Article 9: Entry into Force]

The Parties shall implement this Chapter as soon as is practicable and under no circumstances later than [x] years from the date of entry into force of this Agreement.]

Parties note that the need for and content of the Article will depend on the final text of the Chapter.

[CN: Annex 1]

Canada-EU CETA TBT Committee

The Parties shall be represented at the Canada-EU CETA TBT Committee by:

(a) in the case of the European Union, the European Commission; and

⁶ Drafter's note: The intent of this reference is to refer to the governing body established for the CETA.

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(b) in the case of Canada, the Department of Foreign Affairs and International Trade, or its successor.] **[EC: See note to Article 8]**

Parties note that the need for and content of the Article will depend on the final text of the Chapter.

D.

REGULATORY COOPERATION

Article X.1: Scope

This Chapter applies to regulatory measures, including the development and review thereof, of the [Parties' regulatory authorities that are covered by the TBT Agreement, the SPS Agreement, the GATT 1994, and the GATS, [including Chapters [X,Y,Z] of this agreement,] including methodological aspects of the development of regulations.

NB: table brackets have been left around "Parties' regulatory authorities" to indicate the need for consistency in terminology to be ensured across chapters during the legal scrub. Table brackets have been used around the reference to "Chapters [X,Y,Z] of this agreement" to indicate the need to revisit which chapters of the CETA, if any, are referred in the scope of the Regulatory Cooperation Chapter.

Article X.2: Principles

1. The Parties affirm their rights and obligations relating to regulatory measures under the TBT Agreement, SPS Agreement, GATT 1994 and GATS.
2. The Parties commit themselves to ensuring high levels of protection for human, animal and plant life or health, and the environment in accordance with the TBT Agreement, SPS Agreement, GATT 1994 and GATS.
3. The Parties recognise the value of regulatory cooperation with their relevant trading partners on regulatory issues both bilaterally and multilaterally. The Parties will, whenever practicable and mutually beneficial, approach regulatory cooperation in a way that is open to participation by other international trading partners.
4. Without prejudice to the ability of either Party to carry out its regulatory, legislative and policy activities, the Parties commit themselves to further developing their regulatory cooperation in light of their mutual interest to (a) prevent and eliminate unnecessary barriers to trade and investment; (b) enhance the climate for competitiveness and innovation, including through pursuing regulatory compatibility, recognition of equivalence, and convergence; and (c) promote transparent, efficient and effective regulatory processes that better support public policy objectives and fulfil the mandates of regulatory bodies, including through the promotion of information exchange and enhanced use of best practices.
5. The provisions of this Chapter replace the Government of Canada – European Commission Framework on Regulatory Cooperation and Transparency and shall govern all activities previously undertaken in the context of that Framework.
6. The Parties may undertake regulatory cooperation activities, on a voluntary basis. For greater certainty, neither Party is obliged to enter into particular regulatory cooperation activities, and either Party may refuse to cooperate or may withdraw from cooperation. However, if a Party refuses to initiate or withdraws from regulatory cooperation it should be prepared to explain the reasons for its decision to the other Party.

Article X.3 Objectives of Regulatory Cooperation

1. The objectives of regulatory co-operation include

A. Contributing to the protection of human life, health or safety, animal or plant life or health, and the environment.

to contribute to the protection of human life, health or safety, animal or plant life or health and the environment by:

- (a) leveraging international resources in areas such as research, pre-market reviews and risk analysis to address important regulatory issues of local, national and international concern; and
- (b) contributing to the base of information used by regulatory departments for identifying, assessing and managing risks.

B. Strengthening regulatory governance and creating better regulation

to build trust, deepen mutual understanding of regulatory governance and obtain from each other the benefit of expertise and perspective to:

- (a) improve the planning and development of regulatory proposals;
- (b) promote transparency and predictability in the development and establishment of regulations
- (c) enhance the efficacy of regulations;
- (d) identify alternative instruments;
- (e) recognize the associated impacts of regulations;
- (f) avoid unnecessary regulatory differences; and
- (g) improve regulatory implementation and compliance.

C. Facilitating trade and investment

to facilitate bilateral trade and investment by:

- (a) building on previously existing co-operative arrangements;
- (b) reducing unnecessary differences in regulation; and
- (c) identifying new ways of working for co-operation in specific sectors.

D. Promoting competitiveness and enhancing the climate for innovation

to contribute to the improvement of competitiveness and efficiency of industry by:

- (a) minimizing administrative costs wherever possible;
- (b) reducing duplicative regulatory requirements and consequent compliance costs wherever possible; and
- (c) pursuing compatible regulatory approaches including where possible and appropriate:
 - (i) the application of regulatory approaches which are technology-neutral;
 - (ii) recognizing equivalence and convergence.

Article X.4 Regulatory Cooperation Activities

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1. The Parties shall endeavour to fulfill the objectives set out in article X.3 by undertaking regulatory co-operation activities including:

(a) *Regulatory Governance*

Engaging in ongoing bilateral discussions, including to:

- (i) discuss regulatory reform and its effects on the Canada-EU relationship;
- (ii) identify lessons learned;
- (iii) explore, if appropriate, alternative approaches to regulation, and
- (iv) exchange experiences with regulatory tools and instruments, including regulatory impact assessments, risk assessment and compliance and enforcement strategies.

(b) *Consultation and Exchange of Information*

1. Consulting with each other as appropriate, and exchanging information during the regulation development process. This consultation and exchange may occur throughout the development process, and should begin as early as possible in that process.

2. Sharing non-public information to the extent that such information may be shared with foreign governments in accordance with the applicable rules of the Party

(c) *Sharing Information on Regulatory Proposals*

1. Sharing proposed technical or sanitary and phytosanitary regulations that may have an impact on trade with their counterparts at as early a stage as possible so that comments and proposals for amendments may be taken into account,

2. Providing, upon request by their counterparts, copies of the proposed regulation, subject to applicable privacy laws, and allow sufficient time for interested parties to provide comments in writing.

(d) *Selection of Regulatory Approaches*

1. Exchanging information about contemplated regulatory actions, measures or amendments under consideration, at the earliest stage possible, in order to:

a. better understand the rationale behind regulatory choices, including instrument choice and examine the possibilities for greater convergence on how to state the objectives of regulations and to define the scope of regulations. The interface between regulations, voluntary standards and conformity assessment should also be addressed in this context;

b. compare methods and assumptions used in analyzing regulatory proposals, including, when appropriate, analysis of technical or economic practicability, and benefits in relation to the objective pursued, of any major alternative regulatory requirements and approaches considered. This information exchange should also include compliance strategies, and impact assessments, including a comparison of the potential cost-effectiveness of the regulatory proposal to that of major alternative regulatory requirements and approaches considered;

c. examine opportunities to minimize unnecessary divergences in regulations through means such as:

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- (i) achieving harmonized, equivalent or compatible solutions, or
- (ii) considering the use of mutual recognition in specific cases.

2. Conducting concurrent or joint risk assessment and regulatory impact assessments if practicable and mutually beneficial.

(e) *International Standards, Guides and Recommendations*

Cooperating on issues regarding the development, adoption, implementation and maintenance of international standards, guides and recommendations.

(f) *Identification and Selection of Issues to be Addressed through Regulation*

Data collection

1. Examining the appropriateness and possibility of collecting the same or similar data about the nature, extent and frequency of problems potentially warranting regulatory action when it would expedite making statistically significant judgments about those problems.

2. Periodically conducting comparisons of data collection practices.

Data collection methodologies:

3. Examining the possibility and appropriateness of using the same or similar assumptions and methodology as those used by their counterparts for analyzing the data and determining the magnitude and causes of specific problems and, on this basis, to consider possibilities to bring them closer.

4. Periodically comparing analytical assumptions and methodologies.

Compliance Strategies:

5. Exchanging information on the administration, implementation and enforcement of regulations, as well as on the means to obtain and measure compliance.

(g) *Research supporting the Development of Regulation*

conducting co-operative research agendas in order to:

- (1) reduce duplicative research
- (2) generate more information at less cost;
- (3) gather the best data;
- (4) establish, when appropriate, a common scientific basis;
- (5) address the most pressing regulatory problems in a more consistent and performance-oriented manner; and
- (6) minimize unnecessary differences in new regulatory proposals while more effectively improving health, safety and environmental protection.

(h) *Post-implementation review of regulations*

1. Conducting post implementation reviews of regulations or policies.

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2. Comparing methods and assumptions used in those post implementation reviews.

3. When applicable, making summaries of the results of those post-implementation reviews available to each other.

(i) *Reviewing existing regulatory differences*

Identifying the appropriate approaches to reducing any adverse effects of existing regulatory differences on bilateral trade and investment in sectors identified by a Party, including, when appropriate, through greater convergence, mutual recognition, minimising the use of trade distorting regulatory instruments, and use of international standards including standards and guides for conformity assessment.

Article X.5: Compatibility of Regulations

When developing or reviewing regulatory measures, each Party shall consider the regulatory measures or initiatives of the other Party on the same or related topics with a view to enhancing convergence and compatibility between their respective regulatory measures, when appropriate. In accordance with Article 2, this consideration does not prevent either Party from adopting differing measures or pursuing differing approaches for reasons including different institutional and legislative approaches, or circumstances, values or priorities particular to that Party. [CAN: When differing measures are proposed, a Party shall, upon request of the other Party, provide a written explanation regarding the rationale for the differing measure.]

[CAN: Article X.6: Role and Composition of the Regulatory Cooperation Committee

1. In addition to the functions set out in the Framework, the Regulatory Cooperation Committee (hereinafter “the RCC”), created under Paragraph 23 of the Framework, shall oversee and review the implementation of this Chapter.

2. The RCC shall perform the following functions:]

[In order to promote, facilitate and encourage regulatory cooperation between the Parties, the Parties hereby [CAN: establish][EC: charge / “TBD”] the [EC: “Body”][CAN: Regulatory Cooperation Committee] to:

- (a) Provide a forum for discussion of regulatory issues of mutual interest identified by the Parties through, inter alia, any consultations conducted in accordance with Article X.8;
- (b) Assist individual regulators in identifying potential partners for cooperation activities and provide appropriate tools, such as model confidentiality agreements;
- (c) Review regulatory initiatives, whether in progress or anticipated that either Party considers provide potential for cooperation; these reviews, which will be carried out in consultation with regulatory departments and agencies, should support the implementation of this Chapter;

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- (d) Maintain an overview of current regulatory cooperation activities, on the basis of reports obtained from regulatory departments and agencies, which will provide information to stakeholders, political leaders and senior management about the aims, objectives and achievements of the individual regulatory cooperation initiatives;
- (e) Annually produce and make publicly available a report summarizing, *inter alia*:
 - (i) Progress in regulatory cooperation activities over the past twelve months;
 - (ii) Areas where regulators have agreed to cooperate in the future;
- (f) Adopt its own terms of reference, procedures and work-plan for administration and implementation of [this Chapter]; and
- (g) Report to the [CETA's Trade Council] on implementation of [this Chapter] as appropriate.]

[CAN: 3. The RCC is co-chaired by the Government of Canada and the European Commission, and is comprised of relevant officials of each Party, at a level and by means deemed appropriate by each Party. The RCC shall meet at least annually. The Parties may invite others to participate in the meetings of the RCC.]

NB. Parties agree on the objectives and functions of the mechanism overseeing this chapter and recognize that the exact nature of the mechanism will likely be determined at a later date in the negotiations.

Article X.7: Further Cooperation of Parties

1. The Parties agree to explore mechanisms in the future to address issues such as plant, animal and food-related human health issues that are outside the scope of the Canada-EC Agreement on Sanitary Measures to protect Public and Animal Health in respect of Trade in Live Animals and Animal Products.
2. Pursuant to Article X.6.2(c) and to enable monitoring of forthcoming regulatory projects and to identify opportunities for regulatory cooperation, the Parties shall:
 - (a) Periodically exchange information of ongoing or planned regulatory projects in their areas of responsibility. This information should include, where appropriate, new technical regulations, and the amendments to existing technical regulations that are likely to be proposed or adopted and

[CAN: (b) Upon request by either Party concerning a specific proposal, supplement the information referred to in Article X.7.2(a) with information, if known and available, regarding, *inter alia*:

- (i) regulatory approaches under consideration by a Party, and
- (ii) the potential benefits, costs and other impacts, both domestic and non-domestic, of those regulatory approaches.]

3. The Parties may facilitate regulatory cooperation through the exchange of officials pursuant to a specified arrangement.

LIMITE

4. The Parties agree to cooperate and share information on a voluntary basis in the area of consumer product safety. Such cooperation and exchange of information may include, but is not limited to:

- scientific, technical, and regulatory information, to help ensure the safety of consumer products;
- information on emerging issues of significant health and safety relevance within their scope of authority;
- information on standardisation activities and cooperation in comparatively assessing specific product safety standards and in initiating and where applicable endorsing standardisation activities according to their respective rules and procedures;
- information on market surveillance and enforcement activities;
- information on risk assessment methods and product testing;
- information on dangerous products and preventive and corrective measures taken in their regard.

[The modalities and further details of the cooperation, including the areas of information exchange covered by this agreement, confidentiality rules, possible reciprocal access to information systems such as the European Commission's RAPEX system and Health Canada's Consumer Product Incident Reporting System, and the conditions of the termination of the agreement will be agreed in a separate document linked to this agreement. This document shall be agreed by *<a committee to be determined>* and no exchange of confidential data nor any grant of access to data systems shall be possible until this document is signed.]

Article X.8: Consultations with Private Entities

In order to gain non-governmental perspectives, the Parties may jointly or otherwise consult with stakeholders and interested parties, including representatives from academia, think-tanks, non-governmental organizations, business, consumer and other organizations by any means they deem appropriate on matters relating to the implementation of this Chapter.

E.

**[C: CHAPTER FIVE
SANITARY AND PHYTOSANITARY MEASURES]**

[C: Article 501: Objectives

The objectives of this Chapter are to:

- (a) protect human, animal and plant life or health in the territory of each Party;
- (b) ensure that the Parties' sanitary and phytosanitary (SPS) measures do not create unjustified barriers to trade; and
- (c) enhance the implementation of the *WTO Agreement on the Application of Sanitary and Phytosanitary Measures (WTO SPS Agreement)*.]

[C: Article 502: Scope and Coverage

This Chapter applies to all SPS measures that may, directly or indirectly, affect trade between the Parties.]

[C: Article 503: Definitions

sanitary or phytosanitary measure means any measure referred to in Annex A, paragraph 1 of the SPS Agreement;

SPS Agreement means the *WTO Agreement on the Application of Sanitary and Phytosanitary Measures*;]

[C: Article 504: Rights and Obligations

1. The Parties affirm their existing rights and obligations with respect to each other under the WTO SPS Agreement.
2. The Parties agree to use the WTO dispute settlement procedures for any formal disputes regarding SPS measures.]

[C: Article 505: Committee on Sanitary and Phytosanitary Measures

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Measures (SPS Committee), comprising representatives of each Party from the relevant trade and regulatory agencies, ministries or other institutions who have responsibility for SPS matters.
2. The SPS Committee shall
 - (a) provide a regular forum for exchange of information relating to each Party's regulatory systems, including the scientific and risk assessment basis for SPS measures;
 - (b) provide direction for the identification, management and resolution of SPS issues; and
 - (c) improve understanding between the Parties related to specific implementation issues concerning the *WTO SPS Agreement*, including clarification of regulatory frameworks and decision making procedures
3. The SPS Committee may consider, among other things, the following:
 - (a) the promotion of enhanced transparency of SPS measures;
 - (b) the promotion of cooperation between the Parties on SPS issues under discussion in multilateral and international fora including the WTO SPS Committee, the Committees of the Codex Alimentarius Commission, the International Plant Protection Convention (IPPC), and the World Organization for Animal Health (OIE).
4. Unless the Parties otherwise agree, the SPS Committee shall meet no later than six months following the entry into force of this Agreement. The SPS Committee shall establish its rules of procedures and work program at its first meeting.
5. Following its initial meeting, the SPS Committee shall meet as required, normally on an annual basis. If agreed by the Parties, a meeting of the SPS Committee may be held by videoconference or teleconference.
6. The SPS Committee shall report annually on its activities and work program to the [CETA Oversight Body].
7. Upon entry into force of this Agreement, each Party shall designate a Contact Point to coordinate the SPS Committee's agenda and to facilitate communications on SPS matters.
8. With respect to measures related to trade in live animals and animal products:

LIMITE

- a) The SPS Committee may refer an SPS issue, within the scope of the *Agreement between the European Union and the Government of Canada on sanitary measures to protect public and animal health in respect of trade in animal and animal products (Veterinary Agreement)*, signed December 17, 1998, to the Joint Management Committee for Veterinary Issues (JMC on Veterinary Issues) established under that agreement.
- b) If the SPS Committee refers an SPS issue to the Joint Management Committee for Veterinary Issues for consideration, the SPS Committee may set the terms of reference to the JMC and it may request that the JMC provide a report on its findings to the SPS Committee.
- c) A referral to the JMC on Veterinary Issues is without prejudice to the SPS Committee taking any other action regarding the issue, including a referral to the [CETA Oversight Body].
- d) As appropriate, the JMC on Veterinary Issues may refer issues to the CETA SPS Committee for consideration.

9. With respect to measures related to trade in plants, plant products and other regulated articles:

- a) Annex XXX and the WTO SPS Agreement shall govern the rights and obligations of the Parties.
- b) The SPS Committee may refer an SPS issue, within the scope of Annex XXX, to the Joint Management Committee on Plant Issues (Plant JMC), established under Annex XXX.
- c) If the SPS Committee refers an SPS issue to the Plant JMC for consideration, the SPS Committee may set the terms of reference to the JMC and it may request that the JMC report back to the SPS Committee with its findings.
- d) As appropriate, the Plant JMC may refer issues to the CETA SPS Committee for consideration.
- e) A referral to the JMC on phytosanitary issues is without prejudice to the SPS Committee taking any other action regarding the issue, including a referral to the [CETA Oversight Body].

10. With respect to SPS issues not within the scope of the Veterinary Agreement or Annex XXX of this Agreement, the Parties may establish Sub-committees, as appropriate, to identify and discuss technical and scientific issues within the scope of this Agreement, including food safety, plant health or animal health.

11. The SPS Committee and/or sub-committees may also establish ad hoc technical working groups as needed.

12. A Party may refer any SPS issue to the SPS Committee. The SPS Committee should consider any matter referred to it as expeditiously as possible.

Pursuant to paragraph 10, in the event that the SPS Committee is unable to resolve an issue expeditiously, the SPS Committee shall, upon request of a Party, report promptly to the CETA Oversight Body on the matter.]

Section 1.12 [EU: SECTION

Section 1.13 SANITARY AND PHYTOSANITARY MEASURES

This Agreement does not affect the Agreement between the European Community and the Government of Canada on sanitary measures to protect public and animal health in respect of trade in animals and animal products,]

Article
[EU: Phytosanitary measures

1. The objective of this section is to facilitate trade between the Parties in the field of phytosanitary legislation, whilst safeguarding plant health by further implementing the principles of the WTO on the Application of Phytosanitary Measures (“the WTO SPS Agreement”).
2. The objectives of this section are pursued through the “Agreement on Phytosanitary Measures Applicable to Trade in Plants and Plant Products, which is attached as Annex XXX.
3. By way of derogation from Article ..., the Committee, when dealing with phytosanitary measures, shall be composed of representatives of the EU and Canada with responsibility for Phytosanitary matters. This Committee shall then be called the "Joint Management Committee for Phytosanitary Matters". The functions of the Committee are set out in Article 16 of Annex XXX.
4. For the purpose of Article 184, consultations held under Article 16 of Annex XXX shall be deemed to constitute the consultations referred to in Article ..., unless the Parties decide otherwise.]

ARTICLE II. [EU: ANNEX XXX

(Referred to in Article ...)

**AGREEMENT
ON PHYTOSANITARY MEASURES APPLICABLE TO TRADE IN PLANTS AND
PLANT PRODUCTS**

The Parties, as defined in Article ... of the CETA:

DESIRING to facilitate trade between the EU and Canada in plants and plant products, whilst safeguarding plant health;

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CONSIDERING that the implementation of the present Agreement shall take place in accordance with the internal procedures and legislative processes of the Parties;

CONSIDERING that recognition of equivalence will be gradual and progressive and should apply to priority sectors;

CONSIDERING that one of the objectives of Part IV, Title I of the Agreement is to progressively and reciprocally liberalise trade in goods in accordance with the GATT 1994;

REAFFIRMING their rights and obligations under the WTO Agreement and its Annexes and in particular the SPS Agreement;

DESIRING to ensure full transparency as regards phytosanitary measures applicable to trade, to have a common understanding of the WTO SPS Agreement and to implement its principles and provisions;

RESOLVED to take the fullest account of the risk of spread of pests and of the measures put in place to control and eradicate such pests, to protect plant health while avoiding unnecessary disruptions to trade;

HAVE AGREED AS FOLLOWS:]

Article 1 **Objectives**

1. The objective of this Agreement is to facilitate trade in plants, plant products and other regulated articles between the Parties, whilst safeguarding plant health, by :

- (a) ensuring full transparency as regards Phytosanitary measures applicable to trade;
- (b) establishing a mechanism for the recognition of equivalence of such Phytosanitary measures maintained by a Party
- (c) recognition of the plant health status of the other Party and recognizing pest status, pest free areas, and areas of low pest prevalence;
- (d) further implementing the principles of the WTO SPS Agreement;
- (e) establishing mechanisms and procedures for trade facilitation; and
- (f) improving communication and co-operation between the Parties on phytosanitary measures.

Article 2 **Multilateral obligations**

The Parties reaffirm their rights and obligations under the WTO Agreement and, in particular, the WTO SPS Agreement and under the International Plant Protection Convention (IPPC).

Article 3 **Scope**

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1. This Agreement applies to phytosanitary measures applied by either party to plants, plant products, and regulated articles in so far as they affect trade between the Parties.

2.] The Committee [EU: mentioned] [C: established] in Article [EU: 16] [C: 507.2] may [EU: modify] [C: elaborate] this Agreement by means of a decision to extend the scope to other measures affecting trade in plants, plant products, and other regulated articles between the Parties.

Article 4 **Definitions**

For the purposes of this Agreement definitions in Annex A of the WTO SPS Agreement and IPPC definitions will be used where they exist. In addition, the following definitions shall apply:

[EU:

a)“Protected Zones“ means, in the case of the EU, zones within the meaning of Article 2(1)(h) of COUNCIL DIRECTIVE 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community, or any successor provision]

[C: b) “Agreement” means the entire text of this Agreement and all its Appendices.]

Article 5 **Competent authorities**

1. The competent authorities of the Parties are described in Appendix I.

[C: 2. The Parties shall inform each other of [EU: or] any significant changes to the structure, organisation of their competent authorities unless otherwise notified to the relevant international organizations].

Article 6

[EU: Recognition of pest status, pest free areas, protected zones and areas of low pest prevalence

A. Recognition of pest status

Each Party shall establish a list of regulated pests based on the following principles:

1. Pests not known to occur within any part of its own territory.
2. Pests known to occur within any part of its own territory and under official control.
3. Pest known to occur within any part of its own territory, under official control and for which pest free areas/protected zones are established.
4. Any change to the list of pest status will be immediately notified to the other Party unless otherwise notified to the relevant international organization.

LIMITE

B. Recognition of Pest Free Areas (PFAs) and protected zones

1. The Parties recognise the concept of PFAs, and their application in respect of ISPM 4, as amended from time to time, and protected zones
2. Each Party shall ensure that trade in plants, plant products and other goods takes account of the pest status in an area or zone recognised by the other Party.

C. Recognition of areas of low pest prevalence

1. The Parties recognise the concept of Areas of Low Pest Prevalence, in respect of ISPM 29, as amended from time to time. The Parties commit to discuss the application of Areas of Low Pest Prevalence with respect to trade in plants, plant products, and regulated articles.
2. Each Party shall ensure that trade in plants, plant products and other goods takes account of the pest status in an area or zone recognised by the other Party.

[C: Recognition of pest status, pest free areas, pest free place of production, pest free production site, areas of low pest prevalence and protected zones]

A. Recognition of pest status, pest free areas, pest free place of production, pest free production site, areas of low pest prevalence and protected zones

3. Each Party shall ensure that trade in plants, plant products and other regulated articles takes account of the pest status in an area, including pest free areas, pest free place of production, pest free production site, areas of low pest prevalence and protected zones recognised by the other Party.

Upon request of the exporting party, and the agreement of the importing Party, the importing Party shall take the necessary legislative or administrative measures to allow import on that basis of the recognition of pest status in an area, without undue delay.]

Article 7

Determination and recognition of equivalence of Phytosanitary Measures

1. A party may recognize the other Party's individual measure or group of measures or applicable systems as equivalent in accordance with the relevant ISPMs.

[EU: 2. The importing Party shall recognize a phytosanitary measure, group of measures, or applicable systems as equivalent if the exporting Party objectively demonstrates that its measure achieves the importing Party's appropriate level of protection.

3. Should either Party change its phytosanitary measure, group of measures, or applicable systems recognized as equivalent that Party must determine whether equivalence is

LIMITE

maintained and needs to be reviewed. In case of a review that Party shall consult with the other Party without undue delay.]

4. The other Party shall have the right to comment on the review of the equivalence and to provide additional assurances for addressing the concerns related to the new measures. The previously recognised equivalence remains applicable until the end of the consultation and review period or the legislative amendment process that had established the equivalence. In the case of a significant safety risk the importing country reserves the right of applying emergency measures in accordance with the provisions of Article 14X.]

Article 8 **Transparency**

1. The importing Party shall make available its phytosanitary import requirements for all commodities. This information shall include, as appropriate the additional declarations, as prescribed by the importing Party.
2. [C: For the notification by the Parties of amendments or proposed amendments of the requirements referred to in paragraph 1:
 - a. They shall comply with the provisions of the WTO SPS Agreement.
 - b. Without prejudice to the provisions of Article 16, the importing Party shall take into consideration the transport time between the Parties to establish the date of entering into force of the amended phytosanitary import requirements referred to in paragraph 1.
 - c. Without prejudice to the provisions of Article 16, in case of failure by the importing Party to comply with these notification requirements, the importing Party shall continue to accept the commodity under the previously applicable phytosanitary import requirements.]

Article 9 **Trade Conditions**

[C:

1. The Parties agree to actively explore ways to apply their import requirements to the total territory of the exporting party and to reinforce predictable and smooth trade between the Parties.] [EU: Import requirements shall be restricted to ensuring the absence of regulated pests in the Importing Party and shall be applicable to the total territory of the exporting Party.]
2. For conditions affecting trade of [EU: the commodities] [C: regulated articles], upon request of the exporting Party, the Parties shall enter into consultations in accordance with the provisions of Article [C:15 (consultations)] [EU: 16] , in order to agree on alternative or [C: additional import conditions of the importing Party.] [EU: equivalent measures of the exporting Party meeting the import conditions of the importing Party] [C: Such alternative or additional import conditions may, when appropriate, be based on measures of the exporting Party which are recognised as equivalent by the importing Party.] If

LIMITE

agreed, the importing Party shall take the necessary legislative and/or administrative measures to allow import on that basis, without undue delay.

3. Upon request of a Party, the other Party shall provide full explanation and supporting data for the determinations and decisions covered by this Article, subject to the domestic laws of each Party.

[EU: 4. Import shall not be subject to specific import authorisations.]

5. Consignments of regulated commodities shall be accepted without pre-clearance of the [EU: exporting Parties' certification system.] [C: commodity on a consignment basis] [C: , unless bilaterally agreed].

Article 10 **Phytosanitary Certification**

[EU: 1 The Parties agree that phytosanitary certification at importation shall be carried out on the basis of the importing Party's rules.]

2. The Committee referred to in Article 16 may agree on rules to be followed in case of electronic certification, withdrawal or replacement of certificates.

[EU: 3 The Parties shall take all necessary steps to ensure the integrity of the certification process, to guard against fraud and prevent false and misleading certification.

4 The exchange of original phytosanitary certificate(s) information may occur by paper based systems and / or secure methods of electronic data transmission offering equivalent certification guarantees. Where the exporting Party elects to provide electronic official certificates the importing Party must have determined that equivalent security guarantees are being provided. The importing Party's agreement for the exclusive use of electronic certification can either be recorded in the Appendix to the Agreement or by correspondence in accordance with Article 16(2) to the Agreement.]

[EU: Article 11 **Audit**

1. In order to maintain confidence in the effective implementation of the provisions of this Agreement, each Party, within the scope of this Agreement, has the right:

- (a) to carry out, in accordance with the guidelines of Appendix VII, audit of all or part of the other Party's authorities' phytosanitary procedures. The expenses of such audit shall be borne by the Party carrying out the audit;

2. Either Party may share the results and conclusions of its audits with third countries, and make them publicly available.]

Article 12 **[EU: Import checks and inspection fees]**

[EU:

LIMITE

1. The frequency and nature of phytosanitary checks of consignments at importation shall be based on the risk to plant health.
2. The inspection fees and the frequency rate of import checks may be set out in Appendix VIII or may be addressed by the Committee. The Committee may address any other requests by the Parties for the modification of import checks.
3. In the event that import checks reveal non-conformity with the relevant import requirements, the action taken by the importing Party shall be based on an assessment of the risk involved and the least trade restrictive measures.]

Article 13 **Information exchange**

1. The Parties shall exchange information which is relevant for the implementation of this Agreement on a systematic basis, for developing standards, for providing assurance, for engendering mutual confidence and for demonstrating the efficacy of the official phytosanitary procedures. Where appropriate, this exchange of information may include exchanges of officials.
2. The Parties shall also exchange information on other relevant topics including:
 - (a). any significant changes to the structure, organisation of their competent authorities;
 - (b). significant events concerning commodities covered by this Agreement, including information exchange provided for in Articles 7 and 8;
 - (c). on request, the results of a Party's official phytosanitary controls and a report concerning the results of the controls carried out;
 - (d). any amendment concerning the measures affecting import checks and inspection fees and of any significant changes in the administrative conduct for such checks.
 - (e). the results of import checks provided for in Article 12 in case of rejected or non-conforming consignments of plants and plant products;
 - (e). on request, pest risk analyses (PRAs) and scientific opinions, relevant to this Agreement and produced under the responsibility of a Party;
 - (f). notifications of interception for regulated pests.
3. On request, the Parties shall provide for the submission of scientific information to the relevant scientific fora to substantiate any views or claims made in respect of a matter arising under this Agreement. Such information shall be evaluated by the relevant scientific fora in a timely manner, and the results of that examination shall be made available to both Parties.
4. When the information referred to in this Article has been made available by notification to the WTO or relevant international organizations in accordance with the relevant rules [EU: . When the above information has been made available on an official, publicly accessible and fee free web-sites of the Parties and a notification to the other Party has taken place], the information exchange shall be considered to have taken place.

The contact points for the information exchange referred to in this Article are to be established.

Article 14

Notification [C : of Non-Compliance] [EU: and consultation]

[EU:

1. Each Party shall notify in writing to the other Party without undue delay of any serious or significant plant health risk concerning:

- (a) [CA: pest status, pest free areas, pest free place of production, pest free production site, areas of low pest prevalence] [EU: the pest free areas or protected zones referred to in Article 6;
- (b) the pest status of any relevant pests;
- (c) on request findings of phytosanitary relevance or important associated risks with relevant pests ; and
- (d) on request any additional measures beyond the basic requirements of their respective measures taken to control or eradicate pests.]

[C: Article 15
Consultations

- 1. Where a Party has serious concerns regarding a risk to plant health, consultations regarding the situation shall, on request, take place without undue delay. Each Party shall endeavour in such situations, to provide all the information necessary to avoid a disruption in trade, and to reach a mutually acceptable solution consistent with the protection of plant health.
- 2. Upon request of a Party, consultations referred to in paragraph 1 shall be held. The requesting Party shall ensure the preparation of the minutes of the consultation, which shall be formally approved by the Parties.]

Article 16

Emergency measures and Emergency actions

[EU:

- 1. The importing Party may, on serious plant health grounds, take emergency measures necessary for the protection of plant health. For consignments in transport between the Parties, the importing Party shall consider the least trade restrictive measures in order to avoid unnecessary disruptions to trade.
- 2. The Party taking the measures shall notify the other Party thereof without undue delay of the decision to implement them. Upon request of either Party and in accordance with the provisions of Article 15, the Parties shall hold consultations regarding the situation without undue delay. The Parties shall take due account of any information provided through such consultations and shall endeavour to avoid unnecessary disruption to trade, taking into account, where applicable, the outcome of the provisions of Article 15.]

Article 17

Outstanding issues

Article 18

Joint Management Committee [C: on Plant Issues]

1. [C: The Parties hereby establish a Plant JMC led by representatives of each party from the relevant regulatory authorities who have responsibility for matters relating to the Agreement.]
2. The Joint Management Committee [C: on Plants], hereafter called the [C: Plant JMC] [EU: Committee, established in Article XXX of the CETA Agreement] shall meet within the first year, after the entry into force of this Agreement, and on request of either Party thereafter, not exceeding however a frequency in principle of one meeting a year. If agreed by the Parties, a meeting of the Committee may be held by video or audio-conference. The Committee may also address issues out of session, by correspondence.
2. The Committee shall:
 - (a) monitor the implementation of this Agreement and consider any matter relating to this Agreement, and examine all matters which may arise in relation to its implementation;
 - (b) review the Appendices to this Agreement, notably in the light of progress made under the consultations and procedures provided for under this Agreement;
 - (c) [EU: modify by means of a decision, Appendices I to XII in light of the review provided for in paragraph(b) or as provided in this Agreement,]
 - d) [EU: make recommendations for modifications to this Agreement in light of the review provided for in paragraph (b) or any agreement on measures related to paragraph (a)].
- [C: e) consider pursuing the design, implementation and review of technical, scientific, and institutional cooperation programs]
- [C: f) Refer issues to the CETA SPS Committee for consideration/resolution;]
- [C: g) Consider issues referred to it by the CETA SPS Committee and report back to that committee on considerations/resolution;]
3. The [EU: Parties] [C: Plant JMC] agree to establish technical working groups, when appropriate, consisting of expert-level representatives of the Parties, which shall identify and address technical and scientific issues arising from the application of this Agreement. When additional expertise is required, the Parties may establish *ad hoc* groups, including scientific groups. Membership of such *ad hoc* groups need not be restricted to representatives of the Parties.
 1. The [EU: Committee] [C: Plant JMC] shall report to the [C: Competent authorities] [EU: Oversight Body] established under the CETA.

LIMITE

5. The Committee shall adopt at its first meeting its working procedures.

[EU: *Article 19*
Territorial application

This Agreement shall apply, on the one hand, as regards plants and plant products and other goods to the territories of Member States of the EU, as laid down in Appendix XI and, on the other hand to the territory of Canada.]

Appendix I

COMPETENT AUTHORITIES

A. Competent authorities of the EU

Control is shared between the National Plant Protection Organizations of the Member States and the European Commission. In this respect the following applies:

- As regards exports to Canada, the Member States are responsible for the control of the production circumstances and requirements, including statutory inspections and issuing plant health certificates attesting to the agreed standards and requirements.
- As regards imports from Canada, the Member States are responsible for the control of the compliance of the imports with the EU's import conditions.
- The European Commission is responsible for overall co-ordination, inspection/audits of inspection systems and the necessary legislative action to ensure uniform application of standards and requirements within the Internal European Market.

B. Competent authority of Canada

The competent authority of Canada is the National Plant Protection Organization of Canada.

[EU: Appendix II

GUIDELINES FOR CONDUCTING AUDITS]

[EU: Appendix III

IMPORT CHECKS AND INSPECTION FEES

A Frequencies of checks]

Appendix IV

CERTIFICATION

Official languages for certification

Import into the EU

Plants and plant products:

LIMITE

The certificate must be drawn up in one of the official languages of the EU and preferably in one of the official languages of the Member State of destination.

Import into Canada

The phytosanitary certificate must be drawn up in one of the official languages of Canada.

[EU: *Appendix V*

TERRITORIAL APPLICATION

For the EU:

The territories of Member States of the EU as laid down in EU legislation.

For Canada]

F.

TRADE REMEDIES

SECTION X: ANTI-DUMPING AND COUNTERVAILING MEASURES

Article 1: General Provisions

1. Each Party retains its rights and obligations under Article VI of GATT 1994, the WTO Agreement on Implementation of Article VI of GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures.
2. The provisions of this Section shall not be subject to the Dispute Settlement provisions of this Agreement
3. The provisions of this Section shall not be subject to the provisions of Chapter XX: Preferential Rules of Origin.

Article 2: Transparency

1. Each Party shall apply anti-dumping and countervailing measures in accordance with the relevant WTO requirements and pursuant to a fair and transparent process.
2. A Party shall ensure, after any imposition of provisional measures and, in any case, before a final determination is made, full and meaningful disclosure of all essential facts under consideration which form the basis for the decision whether to apply final measures. This is without prejudice to Article 6.5 of the WTO Agreement on Implementation of Article VI of GATT 1994 and Article 12.4 of the WTO Agreement on Subsidies and Countervailing Measures.
3. Provided it does not unnecessarily delay the conduct of the investigation, each interested party in an anti-dumping or countervailing investigation⁷ shall be granted a full opportunity to defend its interests.

Article 3: Consideration of Public Interest and Lesser Duty

1. The authorities shall consider information provided in accordance with their domestic law as to whether imposing an anti-dumping or countervailing duty would not be in the public interest.
2. After considering this information, the authorities may consider whether the amount of the anti-dumping or countervailing duty to be imposed shall be the full margin of dumping or amount of subsidy or a lesser amount, in accordance with the domestic law of the Party.

SECTION XX: GLOBAL SAFEGUARD MEASURES

Article 1: General provisions

⁷ For the purpose of this article interested parties shall be defined as per Article 6(11) of the WTO Agreement on Implementation of Article VI of GATT 1994 and Article 12.9 of the WTO Agreement on Subsidies and Countervailing Measures.

LIMITE

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the WTO Agreement on Safeguards, [EC: and Article 5 of the WTO Agreement on Agriculture].
2. The provisions of this Section shall not be subject to the Dispute Settlement provisions of this Agreement.
3. The provisions of this Section shall not be subject to the provisions of Chapter XX: Preferential Rules of Origin.

Article 2: Transparency

1. At the request of the exporting Party, the Party initiating a safeguard investigation or intending to adopt provisional or definitive safeguard measures shall immediately provide:
 - a. the information referred to in Article 12.2 of the WTO Agreement on Safeguards, in the format prescribed by the WTO Committee on Safeguards;
 - b. the public version of the complaint filed by the domestic industry, where relevant; and;
 - c. a public report setting forth the findings and reasoned conclusions on all pertinent issues of fact and law considered in the safeguard investigation. The public report shall include an analysis that attributes injury to the factors causing it and set out the method used in defining the safeguard measures.
2. When information is provided under this Article, the importing Party shall offer to hold informal consultations with the exporting Party in order to review the information provided.

Article 3: Imposition of definitive measures

1. A Party adopting safeguard measures shall endeavour to impose them in a way that least affects bilateral trade.
2. The importing Party shall offer to hold informal consultations with the exporting Party in order to review the matter referred to in paragraph 1. The importing Party shall not adopt measures until 30 days have elapsed since the date the offer to consult was made.

[Section XX: Bilateral Safeguard Clause]

Subsidies

[CA (October 2011):

Article 1: Definition and Scope

1. For the purposes of this Agreement, a subsidy is a measure related to trade in goods which fulfills the conditions set out in Article 1.1 of the *WTO Agreement on Subsidies and Countervailing Measures* (SCM Agreement).
2. A subsidy shall be subject to this [chapter] only if it is specific within the meaning of Article 2 of the SCM Agreement.

Article 2: Principles

1. The Parties acknowledge that subsidies may distort the proper functioning of markets and undermine the benefits of trade liberalization.

Article 3: Transparency

1. Every two years, each Party shall notify the other Party of the following with respect to any subsidy granted or maintained within its territory:
 - a. the legal basis of the subsidy;
 - b. the form of the subsidy; and
 - c. the amount of the subsidy or the amount budgeted for the subsidy.

Notifications provided to the World Trade Organization under Article 25.1 of the SCM Agreement shall be deemed to have met this requirement.

2. To the extent possible, on request of the other Party, a Party shall promptly provide information and respond to questions pertaining to particular instances of government support provided within its territory related to trade in services.
3. When providing information under this [chapter], a Party is not required to disclose confidential information.

Article 4: Informal Consultations

1. If a Party considers that a subsidy of the other Party is adversely affecting, or may adversely affect its interests, that Party may express its concerns to the other Party and request informal consultations on the matter. The other Party shall accord full and sympathetic consideration to that request.
2. During the informal consultations, a Party may seek information on the subsidy provided by the other Party, including on the policy objective and purpose of that subsidy.

Article 5: Dispute Settlement

1. The provisions of this [chapter] shall not be subject to the Dispute Settlement provisions of this Agreement.

Article 6: Relationship with the WTO

1. Each Party retains its rights and obligations under Article VI of GATT 1994 and the SCM Agreement.

Article 7: Review

1. [The Parties shall keep under review the matters to which reference is made in this [chapter]. Each Party may refer such matters to the [relevant committee].]

]

[EU (JANUARY 2012):

**Article x1
Definition of a subsidy**

1. For the purposes of this Agreement, a subsidy is a measure which fulfils the conditions set out in Article 1.1 of the Agreement on Subsidies and Countervailing Measures (ASCM).
2. A subsidy shall be subject to this chapter only if such a subsidy is specific within the meaning of Article 2 ASCM.

**Article x2
Transparency**

1. Every two years, each Party shall notify the other Party of the following with respect to any subsidy granted or maintained within its territory:
 - (a) the legal basis of the subsidy;
 - (b) the form of the subsidy; and
 - (c) the amount of the subsidy or the amount budgeted for the subsidy.

Notifications provided to the World Trade Organization under Article 25.1 of ASCM shall be deemed to have met this requirement.

2. On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to particular instances of government support provided within its territory and related to trade in services.

**Article x3
Prohibited subsidies**

1. The following subsidies shall also be prohibited:
 - (a) Any legal arrangement whereby a government or any public body is responsible to cover debts or liabilities of certain undertakings without any limitation, in law or

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in fact, as to the amount of those debts and liabilities or the duration of such responsibility;

- (b) Support to insolvent or ailing undertakings in whatever form (such as loans and guarantees, cash grants, capital injections, provision of assets below market prices, tax exemptions) without a credible restructuring plan based on realistic assumptions with the view to ensuring the return of the ailing undertaking within a reasonable time to long-term viability and without the undertaking significantly contributing itself to the costs of restructuring⁸

unless the subsidizing Party upon request of the other Party has demonstrated that the subsidy in question does not affect trade of the other Party nor will be likely to do so.

Subparagraphs a) and b) above do not prevent the Parties from providing subsidies that are granted to remedy a serious disturbance in the economy of one of the Parties.

- 2. This article shall not apply to fisheries subsidies, subsidies related to products covered by Annex 1 of the WTO Agreement on Agriculture and other subsidies covered by the WTO Agreement on Agriculture.

Subparagraph (b) above does not apply to subsidies granted as compensation for carrying out public service obligations and subsidies to the coal industry.

Article x4 Other subsidies

- 1. If a Party considers that a subsidy, or a particular instance of government support related to trade in services, granted by the other Party is adversely affecting, or may adversely affect its interests, it may express its concern to the other Party and request consultations on the matter. The requested Party shall accord full and sympathetic consideration to that request.
- 2. This consultation should in particular aim at specifying whether the subsidy or the particular instance government support related to trade in services is only provided to achieve a legitimate objective of public interest, the amount in question is limited to the minimum needed to achieve this objective and the distortive effect on trade of the requesting Party is limited.
- 3. On the basis of the consultation, the requested Party will use its best endeavours to eliminate or minimise the adverse effects of the subsidy, or of the particular instance of government support related to trade in services in question on the first party's trade interests.
- 4. This article shall not apply to fisheries subsidies, subsidies related to products covered by Annex 1 of the WTO Agreement on Agriculture and other subsidies covered by the WTO Agreement on Agriculture.

⁸ This does not prevent the Parties from providing temporary liquidity support in the form of loan guarantees or loans limited to the amount need to merely to keep an ailing firm in business for the time necessary to work out a restructuring or liquidation plan.

Article x5
Confidentiality

When providing information under this [chapter], a Party is not required to disclose confidential information.

Article x6
Relationship with the WTO

Each Party retains its rights and obligations under Article VI of GATT 1994, the ASCM and the WTO Agreement on Agriculture.

Article x7
Dispute settlement

Article x4 of this chapter shall not be subject to the dispute settlement provisions of this Agreement.

G.

INVESTMENT / ESTABLISHMENT Draft Consolidated Text – December Intersessional

Article X.1: Scope

1. This Chapter shall apply to measures adopted or maintained by a Party [relating to] CAN [affecting] EU:

- (a) investors of the other Party;
- (b) covered investments [and
- (c) with respect to Articles X.8 (Performance Requirements), X.12 (Health, Safety and Environmental Measures) and X.13 (Corporate Social Responsibility), all investments in the territory of the Party.] CAN [in all economic activities with the exception of:
- (a) mining, manufacturing and processing⁹ of nuclear materials;
- (b) production of or trade in arms, munitions and war material;
- (c) audio-visual services;
- (d) national maritime cabotage¹⁰, and;
- (e) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
 - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
 - (ii) the selling and marketing of air transport services;
 - (iii) computer reservation system (CRS) services;
 - (iv) groundhandling services
 - (v) airport operation services

2. Nothing in this Chapter shall be construed to require the privatisation of public undertakings or to impose any obligation with respect to government procurement.

3. The provisions of this Chapter shall not apply to subsidies granted or grants provided by a Party, including government-supported loans, guarantees, and insurance.] EU

[Article X.2: Relation to Other Chapters

1. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.

2. A requirement by a Party that a service provider of the other Party post a bond or other form of financial security as a condition of providing a service into its territory does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to the provision of that cross-border service. This Chapter shall apply to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that such bond or financial security is a covered investment.

⁹ For greater certainty, processing of nuclear materials includes all the activities contained in UN ISIC Rev.3.1 code 2330.

¹⁰ Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this chapter covers transportation of passengers or goods between a port or point located in Canada or a Member State of the Community and another port or point located in Canada or Member State of the Community, including on its continental shelf, as provided in the UN Convention on the Law of the Sea and traffic originating and terminating in the same port or point located in Canada or Member State of the Community.

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3. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter [XY] (Financial Services).] CAN

[Article X.3: Market Access

1. Neither Party shall adopt or maintain, either on the basis of its entire territory or on the basis of the territory of [a sub-national government] CAN, measures that:

(a) impose limitations on:

(i) the number of [covered investments,] CAN whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;

(ii) the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(iii) the total number of operations or the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test [¹¹] EU;

(iv) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment;

(v) the total number of natural persons that may be employed [in a particular sector] or that a covered investment may employ and who are necessary for, and directly related to, the performance of economic activity in the form of numerical quotas or the requirement of an economic needs test.

(b) restrict or require specific types of legal entity or joint venture through which an investor may perform an economic activity.] EU

[Article X.4: National Treatment

1. Each Party shall accord to investors of the other Party and [CAN/EU: covered investments] treatment no less favourable than that it accords [, in like circumstances,] CAN to its own [like] EU investors [and investments] EU [with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory] CAN

[2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.] CAN

2. The treatment accorded by a Party under paragraph[s] CAN 1 [and 2] CAN means, with respect to a [regional/provincial or local/municipal] EU [sub-national] CAN government, treatment no less favourable than the most favourable treatment accorded [, in like circumstances,] CAN by that [regional/provincial or local/municipal] EU [sub-national] CAN government to [its own like establishments and] EU investors, [and to investments of

¹¹ Subparagraphs 1(a) (i), (ii) and (iii) do not cover measures taken in order to limit the production of an agricultural product.

investors, of the Party of which it forms a part] CAN [or to those of other provinces or municipalities, whichever is the more favourable] EU.

Article X.5 Most-Favoured Nation Treatment^[12] EU

1. Each Party shall accord to [establishments and] EU investors of the other Party [a] EU treatment no less favourable than that it accords, [in like circumstances,] CAN to [like establishments and] EU investors [of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory] CAN.

[2] CAN [1] EU. [With respect to any measures covered by this Section affecting establishment, unless otherwise provided for in paragraphs 2 and 4,] EU each Party shall accord to [establishments and investors of the other Party a] EU [covered investments] CAN treatment no less favourable than that it accords, [in like circumstances,] CAN to [like establishments and investors] EU [investments of investors] CAN of [major trading economy in the context of an economic integration agreement¹³] EU [a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory] CAN.

[3. For greater certainty, the treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a sub-national government, treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of a non-Party.] CAN

[2. Paragraph 1 shall not apply to economic integration agreements that create an internal market in services and establishment, an to which a Party is a signatory

3. The obligations set by paragraph 1 of this provision shall not apply to treatment granted:

- (a) under measures providing for recognition of qualifications, licences or prudential measures in accordance with Article VII of the General Agreement on Trade in services or its Annex on Financial Services,
- (b) under any international agreement or arrangement relating wholly or mainly to taxation.] EU

[Article X.6: Minimum Standard of Treatment

1. Each Party shall accord to covered investments treatment in accordance with the customary international law minimum standard of treatment of aliens, including fair and equitable treatment and full protection and security.

2. The concepts of “fair and equitable treatment” and “full protection and security” in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.

3. A breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.] CAN

¹³ The obligation contained in paragraph 1 does not extend to the investment protection provisions not covered by this Chapter, including provisions relating to investor-state dispute settlement procedures.

[Article X.7: Compensation for Losses

Notwithstanding paragraph 4(b) of Article X.14 (Reservations and Exceptions), each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to compensation for losses suffered by investments in its territory owing to armed conflict, civil strife or a natural disaster.] CAN

Article X.8: Senior Management and Boards of Directors

1. Neither Party may require that an [enterprise] CAN of that Party that is a covered investment appoint to senior management [or the board of directors] EU positions natural persons of any particular nationality [or require residency or prior residency in the territory of that party] EU.

[2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment be of a particular nationality or be resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.] CAN

[Article X.9: Performance Requirements

1. Neither Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or of a non-Party in its territory to:

- (a) export a given level or percentage of goods or services;
- (b) achieve a given level or percentage of domestic content;
- (c) purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;
- (d) relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
- (e) restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
- (f) transfer technology, a production process or other proprietary knowledge to a person in its territory; or
- (g) supply exclusively from the territory of the Party the goods that such investment produces or the services it provides to a specific regional market or to the world market.

2. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with subparagraph 1(f). For greater certainty, Articles X.03 (National Treatment) and X.04 (Most-Favoured-Nation Treatment) apply to the measure.

3. Neither Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with any of the following requirements:

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- (a) to achieve a given level or percentage of domestic content;
- (b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;
- (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or
- (d) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

4. (a) Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

(b) Subparagraph 1(f) does not apply when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement.

5. Paragraphs 1 and 3 do not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs.

6. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties.

7. The provisions of:

- (a) subparagraphs 1(a), (b) and (c), and 3(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs;
- (b) subparagraphs 1(b), (c), (f) and (g), and 3(a) and (b), do not apply to procurement by a Party or a state enterprise; and
- (c) subparagraphs 3(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.] CAN

Article X.9: Expropriation

[1. Neither Party may nationalize or expropriate a covered investment either directly, or indirectly through measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as “expropriation”), except for a public purpose, in accordance with due process of law, in a non-discriminatory manner and on payment of compensation in accordance with paragraphs 2 and 3. For greater certainty, this paragraph shall be interpreted in accordance with Annex X.9.1 on the clarification of indirect expropriation.

2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (“date of expropriation”), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including the

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declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

3. Compensation shall be paid without delay and shall be fully realizable and freely transferable. Compensation shall be payable in a freely convertible currency and shall include interest at a commercially reasonable rate for that currency accrued from the date of expropriation until the date of payment.

4. The affected investor shall have a right under the law of the expropriating Party to prompt review of its case and of the valuation of its investment by a judicial or other independent authority of that Party in accordance with the principles set out in this Article.

5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the WTO Agreement.

Annex X.9.1 Indirect Expropriation

The Parties confirm their shared understanding that:

1. Indirect expropriation results from a measure or series of measures of a Party that has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

2. The determination of whether a measure or series of measures of a Party constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

(a) the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred;

(b) the extent to which the measure or series of measures interferes with distinct, reasonable investment-backed expectations; and

(c) the character of the measure or series of measures.

3. Except in rare circumstances, such as when a measure or series of measures is so severe in the light of its purpose that it cannot be reasonably viewed as having been adopted and applied in good faith, non-discriminatory measures by a Party that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute indirect expropriations.] CAN

[[CHAPTER 8] PAYMENTS AND CAPITAL MOVEMENTS

ARTICLE 8.1: CURRENT PAYMENTS

The Parties undertake to impose no restrictions and to allow all payments and transfers on the current account of balance of payments between residents of the Parties to be made in freely convertible currency and in accordance with the Articles of the Agreement of the International Monetary Fund.] EU

[ARTICLE 8.2: CAPITAL MOVEMENTS] EU [Article X.10: Transfers] CAN

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1. [With regard to transactions on the capital and financial account of balance of payments,] EU [Each Party shall permit all transfers] CAN [the Parties undertake to impose no restrictions on the free movement of capital] EU relating to [a covered investment] CAN [direct investments] EU [to be] CAN made [freely, and without delay, into and out of its territory. Such transfers include:

- (a) contributions to capital;
- (b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the covered investment;
- (c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
- (d) payments made under a contract entered into by the investor or the covered investment, including payments made pursuant to a loan agreement;
- (e) payments made pursuant to Articles X.6 (Compensation for Losses) and X.9 (Expropriation); and
- (f) payments arising under Section B.] CAN [in accordance with the laws of the host country, to investments and other transactions liberalised in accordance with Chapter [7] (Trade in Services, Establishment and E-commerce) of this Agreement, and to the liquidation and repatriation of these invested capitals and of any profit generated therefrom.] EU

[2. Each Party shall permit transfers relating to a covered investment to be made in the convertible currency in which the capital was originally invested, or in any other convertible currency agreed to by the investor and the Party concerned. Unless otherwise agreed by the investor, transfers shall be made at the market rate of exchange applicable on the date of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities;
- (c) criminal or penal offences;
- (d) reports of transfers of currency or other monetary instruments; or
- (e) ensuring the satisfaction of judgments in adjudicatory proceedings.

4. Neither Party may require its investors to transfer, or penalize its investors for failing to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of the other Party.

5. Paragraph 4 shall not be construed to prevent a Party from imposing any measure through the equitable, non-discriminatory and good faith application of its laws relating to the matters in subparagraphs 3(a) through 3(e).

6. Notwithstanding paragraph 1, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under the WTO Agreement.

[NOTE: If the FTA does not include a Transparency Chapter, an article on transparency will be proposed as Article 11 of the Investment Chapter with its necessary exceptions.]] CAN

[2. Without prejudice to other provisions in this Agreement, the Community and its Member States, within the scope of their respective competences, and Canada recall their international

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commitments with regard to investment, and especially the OECD Codes of Liberalisation and OECD National Treatment Instrument.

3. Without prejudice to other provisions in this Agreement, the Parties shall not introduce any new restrictions on the movement of capital and current payments between residents of the Parties and shall not make the existing arrangements more restrictive.

4. The Parties may hold consultations with a view to further facilitating the movement of capital between them in order to promote the objectives of this Agreement.

ARTICLE 8.3: SAFEGUARD MEASURES

1. Where, in exceptional circumstances, capital movements between the Parties cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy in Canada or one or more Member States, safeguard measures with regard to capital movements that are strictly necessary may be taken by the Party concerned¹⁴ for a period not exceeding six months.

2. The [Trade Committee] shall be informed forthwith of the adoption of any safeguard measure and, as soon as possible, of a time schedule for its removal.] EU

[Article X.11: Subrogation

1. If a Party or any agency thereof makes a payment to any of its investors under a guarantee or a contract of insurance it has entered into in respect of an investment, the other Party shall recognize the validity of the subrogation in favour of the Party or agency to any right or title held by the investor.

2. A Party or any agency thereof, which is subrogated to the rights of an investor in accordance with paragraph 1, shall be entitled in all circumstances to the same rights as those of the investor in respect of the investment. Such rights may be exercised by the Party or any agency thereof, or by the investor if the Party or any agency thereof so authorizes.] CAN

Article X.12: [Health, Safety and Environmental Measures] CAN [Maintaining Levels of Protection] EU

The Parties recognise that it is inappropriate to encourage [investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor.] CAN [the establishment, acquisition, expansion or retention in their territories of an investment or an investor by lowering the levels of protection enshrined in domestic environmental and labour (including occupational health and safety) legislation and standards, or by relaxing laws aimed at protecting and promoting cultural diversity.] EU If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement.] CAN

Article X.13: Corporate Social Responsibility

Each Party should encourage enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate internationally recognised standards of corporate social

¹⁴ The Community or its Member States or Canada.

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responsibility in their practices and internal policies, such as statements of principle that have been endorsed or are supported by the Parties, notably the OECD Guidelines for Multinational Enterprises. These principles address issues such as labour, the environment, human rights, community relations and anti-corruption. The Parties remind those enterprises of the importance of incorporating such corporate social responsibility standards in their practices and internal policies.

[Article X.14: Reservations and Exceptions

1. Articles [X.3 (Market Access)] EU X.4 (National Treatment), X.5 (Most-Favoured-Nation Treatment), X.8 (Senior Management and Boards of Directors) and X.9 (Performance Requirements) do not apply to:

- (a) any existing non-conforming measure that is maintained by:
 - (i) [the level of the European Union, as set by the EU in its schedule to Annex I] EU
 - (ii) the national level of government, as set out by that Party in its Schedule to Annex I,
 - (iii) a [sub-national] level of government, as set out by that Party in its Schedule to Annex I, or
 - (iv) a local level of government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles [X.3 (Market Access)] EU X.4 (National Treatment), X.5 (Most-Favoured-Nation Treatment), X.8 (Senior Management and Boards of Directors) and X.9 (Performance Requirements)).

2. Articles [X.3 (Market Access)] EU X.4 (National Treatment), X.5 (Most-Favoured-Nation Treatment), X.8 (Senior Management and Boards of Directors) and X.9 (Performance Requirements) do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.]

[3. In respect of intellectual property rights, a Party may derogate from Article X.4 (National Treatment), Article X.5 (Most-Favoured-Nation Treatment) and subparagraph 1(f) of Article X.9 (Performance Requirements) in a manner that is consistent with the TRIPS Agreement, including any amendments to the TRIPS Agreement in force for both Parties, and waivers to the TRIPS Agreement adopted pursuant to Article IX of the WTO Agreement.

4. Articles [X.3 (Market Access)] EU X.4 (National Treatment), X.5 (Most-Favoured-Nation Treatment), X.8 (Senior Management and Boards of Directors) and do not apply to:

- (a) procurement by a Party or a state enterprise; or
- (b) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees and insurance.] CAN

[SECTION 7- EXCEPTIONS

ARTICLE 50: GENERAL EXCEPTIONS

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on establishment or cross-border supply of

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services, nothing in this Chapter shall be construed to prevent the adoption or enforcement by either Party of measures:

- (a) necessary to protect public security or public morals or to maintain public order¹⁵;
- (b) necessary to protect human, animal or plant life or health;
- (c) relating to the conservation of exhaustible natural resources if such measures are applied in conjunction with restrictions on domestic investors or on the domestic supply or consumption of services;
- (d) necessary for the protection of national treasures of artistic, historic or archaeological value;
- (e) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
 - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
 - (iii) safety;
- (f) inconsistent with Articles 7.6 and 7.12 on National Treatment, provided that the difference in treatment is aimed at ensuring the effective or equitable imposition or collection of direct taxes in respect of economic activities, investors or services suppliers of the other Party¹⁶.

ARTICLE 51: SECURITY EXCEPTIONS

Nothing in this Agreement shall be construed:

- (a) to require any Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) connected with the production of or trade in arms, munitions and war materials and related to traffic in other goods and materials and to economic activities carried out directly or indirectly for the purpose of supplying a military establishment;
 - (ii) relating to fissionable and fusionable materials or the materials from which they are derived;
 - (iii) taken in time of war or other emergency in international relations; or
- (c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.] EU

[provisions of this article might have to be changed or moved depending on whether there is horizontal security exception]

¹⁵ The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

¹⁶ Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (i) apply to non-resident investors and services suppliers in recognition of the fact that the tax obligation of nonresidents is determined with respect to taxable items sourced or located in the Party's territory; or
- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- (iv) apply to consumers of services supplied in or from the territory of another Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or
- (v) distinguish investors and service suppliers subject to tax on worldwide taxable items from other investors and service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

[Article X.15: Special Formalities and Information Requirements]

1. Nothing in Article X.3 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of covered investments, [such as a requirement that investments be legally constituted under the laws or regulations of the Party,] provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles X.3 (National Treatment) and X.4 (Most-Favoured-Nation Treatment), a Party may require an investor of the other Party, or its covered investment, to provide routine information concerning that investment solely for informational or statistical purposes, provided that such requests are reasonable and not unduly burdensome. The Party shall protect any confidential information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its laws.] CAN

[Article X.16: Denial of Benefits]

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that Party and to investments of that investor if:

- a) investors of a non-Party own or control the enterprise; and
- b) the denying Party adopts or maintains measures with respect to the non-Party that:
 - i. are related to maintenance of international peace and security or the protection of human rights; and
 - ii. prohibit transactions with the enterprise or would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that Party and to investments of that investor if investors of a non-Party or of the denying Party own or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.] CAN

[Should the juridical person have only its registered office or central administration in the territory of the European Union or of Canada respectively, it shall not be considered as a European Union or Canadian juridical person respectively, unless it engages in substantive business operations¹⁷ in the territory of the European Union or of Canada, respectively;] EU

[ARTICLE 15: OTHER AGREEMENTS]

Nothing in this Section shall be taken:

(a) to limit the rights of the Parties to benefit from any more favourable treatment provided for in any existing or future international agreement relating to investment to which a Member State of the European Union and Canada are Parties; and

¹⁷ The EC understands that the concept of "effective and continuous link" with the economy of a Member State enshrined in Article 48 of the EC Treaty is equivalent to the concept of "substantive business operations". Accordingly, for a juridical person set up in accordance with the laws of Canada and having only its registered office or central administration in the territory of Canada, the EC shall only extend the benefits of this Agreement if that juridical person possesses an effective and continuous economic link with the economy of Canada.

(b) to derogate from the international legal obligations of the Parties under those agreements that provide investors of the Parties with more favourable treatment than that provided for under this Agreement.] EU

DEFINITIONS

On 9 August 2010, this chart was updated to reflect Round IV discussion. The definitions that both Parties agreed (at Round IV) to discuss in either the CETA Institutional or Cross-Border Trade in Services chapters have therefore been removed from the following table.

EU Proposed CETA Text Chapter 7: Trade in Services, Establishment and E-Commerce	Canada Proposed CETA Text Chapter X - Investment
<p>‘person’ means either a natural person or a juridical person</p> <p>‘natural person’ means a national of Canada or one of the Member States of the European Union according to their respective legislation;</p>	<p>person means a natural person or an enterprise;</p> <p>person of a Party means a national, or an enterprise of a Party;</p>
<p>‘juridical person’ means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association</p>	<p>enterprise means an entity constituted or organized under applicable law, whether or not for profit, and whether privately owned and controlled or governmentally owned and controlled, including a corporation, trust, partnership, sole proprietorship, joint venture or other association; <i>Chapter X: Investment, Section C: Definitions Article X.35: Definitions</i></p> <p>enterprise means an enterprise as defined in Article [X.01] (Initial Provisions and General Definitions – Definitions of General Application), and a branch of any such entity;</p>
<p>a ‘European Union juridical person’ or a ‘Canadian juridical person’ means:</p> <ol style="list-style-type: none"> a juridical person set up in accordance with the laws of a Member State of the European Union or of Canada respectively, and having its registered office, central administration,¹⁸ or principal place of business in the territory of the European Union or Canada, respectively; or in the case of the supply of a service through establishment, a juridical person owned or controlled by natural persons of one of the Member States of the European Union or of Canada respectively or by European Union juridical persons or Canadian juridical persons respectively. <p>Should the juridical person have only its registered office or central administration in the territory of the European Union or of Canada respectively, it shall not be considered as a European Union or Canadian juridical person respectively.</p>	<p>enterprise means an entity constituted or organized under applicable law, whether or not for profit, and whether privately owned and controlled or governmentally owned and controlled, including a corporation, trust, partnership, sole proprietorship, joint venture or other association; <i>Chapter X: Investment, Section C: Definitions Article X.35: Definitions</i></p> <p>enterprise means an enterprise as defined in Article [X.01] (Initial Provisions and General Definitions – Definitions of General Application), and a branch of any such entity;</p>

¹⁸ Central administration means the head office where ultimate decision making takes place.

<p>unless it engages in substantive business operations¹⁹ in the territory of the European Union or of Canada, respectively;</p> <p>A juridical person is:</p> <p>(i) “owned” by natural or juridical persons of one of the Member States of the European Union or of Canada if more than 50 per cent equity interest in it is beneficially owned by persons of that/a Member State of the European Union or of Canada respectively; and</p> <p>(ii) “controlled” by natural or juridical persons of one of the Member States of the European Union or of Canada if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;</p> <p>(iii) “affiliated” with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person.</p>	
<p>Notwithstanding the preceding paragraph, shipping companies established outside the European Union or Canada and controlled by nationals of a Member State of the European Union or of Canada, respectively, shall also be beneficiaries of the provisions of this Agreement, if their vessels are registered in accordance with their respective legislation in that Member State or in Canada and carry the flag of a Member State or Canada.</p>	
<p>‘economic integration agreement’ means an agreement substantially liberalising trade in services and establishment pursuant to WTO rules.</p>	

¹⁹ The EC understands that the concept of “effective and continuous link” with the economy of a Member State enshrined in Article 48 of the EC Treaty is equivalent to the concept of “substantive business operations”. Accordingly, for a juridical person set up in accordance with the laws of Canada and having only its registered office or central administration in the territory of Canada, the EC shall only extend the benefits of this Agreement if that juridical person possesses an effective and continuous link with the economy of Canada.

<p>‘establishment’ means:</p> <p>(i) the constitution, acquisition or maintenance of a juridical person²⁰, or (ii) the creation or maintenance of a branch or representative office</p> <p>within the territory of a Party for the purpose of performing an economic activity;</p>	<p>investment means:</p> <p>(a) an enterprise; (b) shares, stocks and other forms of equity participation in an enterprise; (c) bonds, debentures and other debt instruments of an enterprise; (d) a loan to an enterprise; (e) an interest in an enterprise that entitles the owner to a share in income or profits of the enterprise; (f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution; (g) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under: i. contracts involving the presence of an investor’s property in the territory of the Party, including turnkey or construction contracts, or concessions, or ii. contracts where remuneration depends substantially on the production, revenues or profits of an enterprise; (h) intellectual property rights; and (i) any other tangible or intangible, moveable or immovable, property and related property rights acquired in the expectation of or used for the purpose of economic benefit or other business purpose;</p> <p>but investment does not mean,</p> <p>(j) claims to money arising solely from: i. commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of the other Party, or ii. the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d); or (k) any other claims to money,</p> <p>that do not involve the kinds of interests set out in subparagraphs (a) to (i);</p>
	<p>covered investment means, with respect to a Party, an investment in its territory of an investor of the other Party on the date of entry into force of this Agreement, as well as investments made or acquired thereafter;</p>
	<p>investment of an investor of a Party means an investment owned or controlled directly or indirectly by an investor of such Party;</p>

²⁰ The terms “constitution” and “acquisition” of a juridical person shall be understood as including capital participation in a juridical person with a view to establishing or maintaining lasting economic links.

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‘investor’ of a Party means any person that seeks to perform or performs an economic activity through setting up an establishment ²¹ ;	investor of a Party means a Party, or a national or an enterprise of a Party, that seeks to make, is making or has made an investment;
	<p>national means a natural person who is a citizen according to Article X.07, or is a permanent resident of a Party.</p> <p>national means:</p> <ul style="list-style-type: none"> (a) in the case of Canada, a natural person who is a citizen or permanent resident of Canada, and (b) in the case of ... <p>except that:</p> <p>a natural person who is a dual citizen of Canada and _____ shall be deemed to be exclusively a national of the Party of his or her dominant and effective nationality; and</p> <p>a natural person who is a citizen of one Party and a permanent resident of the other Party shall be deemed to be exclusively a national of the Party of his or her citizenship;</p>
‘economic activity’ includes any activities of an economic nature except activities carried out in the exercise of governmental authority, i.e. activities carried out neither on a commercial basis nor in competition with one or more economic operators.	
‘subsidiary’ of a juridical person of a Party means a juridical person which is effectively controlled by another juridical person of that Party;	
‘branch’ of a juridical person means a place of business not having legal personality which has the appearance of permanency, such as the extension of a parent body, has a management and is materially equipped to negotiate business with third parties so that such third parties, although knowing that there will if necessary be a legal link with the parent body, the head office of which is abroad, do not have to deal directly with such parent body but may transact business at the place of business constituting the extension.	
	confidential information means confidential business information and information that is privileged or otherwise protected from disclosure under the law of a Party;
	disputing party means either the respondent Party or the investor that has made a claim under Section B;
	ICSID means the International Centre for Settlement of Investment Disputes established by

²¹ Where the economic activity is not performed directly by a juridical person but through other forms of establishment such as a branch or a representative office, the investor (i.e. the juridical person) shall, nonetheless, through such establishment be accorded the treatment provided for investors under the Agreement. Such treatment shall be extended to the establishment through which the economic activity is performed and need not be extended to any other parts of the investor located outside the territory where the economic activity is performed.

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	the ICSID Convention;
	ICSID Convention means the <i>Convention on the Settlement of Investment Disputes between States and Nationals of Other States</i> , done at Washington on 18 March 1965;
	intellectual property rights means copyright and related rights, trademark rights, rights in geographical indications, rights in industrial designs, patent rights, rights in layout designs of integrated circuits, rights in relation to protection of undisclosed information, and plant breeders' rights;
	New York Convention means the <i>United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards</i> , done at New York on 10 June 1958;
	respondent Party means a Party against which a claim is made under Section B;
	Tribunal means an arbitration tribunal established under Article X.20 (Submission of a Claim to Arbitration) or X.24 (Consolidation); and
	UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on 15 December 1976.

[Section B – Settlement of Disputes between an Investor and the Host Party]

Article X.17: Purpose

Without prejudice to the rights and obligations of the Parties under Chapter [XY] (Dispute Settlement), this Section establishes a mechanism for the settlement of investment disputes.

1) Article X.18: Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise

1. An investor of a Party may submit to arbitration under this Section a claim that the respondent Party has breached:

- (a) an obligation under Section A, other than an obligation under Article X.2(4) (Relation to Other Chapters), X.12 (Health, Safety and Environmental Measures), X.13 (Corporate Social Responsibility) or X.15 (Special Formalities and Information Requirements); or
- (b) an obligation under Article [X.02(3)(a)] (Competition Policy, Monopolies and State Enterprises – Monopolies) or [X.03(2)] (Competition Policy, Monopolies and State Enterprises – State Enterprises), only to the extent that a monopoly or state enterprise has acted in a manner inconsistent with the Party's obligations under Section A, other than an obligation under Article X.2(4) (Relation to Other Chapters), X.12 (Health, Safety and Environmental Measures), X.13 (Corporate Social Responsibility) or X.15 (Special Formalities and Information Requirements),

and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor of a Party, on behalf of an enterprise of the respondent Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that the respondent Party has breached:

- (a) an obligation under Section A, other than an obligation under Article X.2(4) (Relation to Other Chapters), X.12 (Health, Safety and Environmental Measures), X.13 (Corporate Social Responsibility) or X.15 (Special Formalities and Information Requirements); or
- (b) an obligation under Article [X.02(3)(a)] (Competition Policy, Monopolies and State Enterprises – Monopolies) or [X.03(2)] (Competition Policy, Monopolies and State Enterprises – State Enterprises), only to the extent that a monopoly or state enterprise has acted in a manner inconsistent with the Party's obligations under Section A, other than an obligation under Article X.2(4) (Relation to Other Chapters), X.12 (Health, Safety and Environmental Measures), X.13 (Corporate Social Responsibility) or X.15 (Special Formalities and Information Requirements),

and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

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3. An investor of a Party cannot submit or continue to pursue a claim under this Section where:

- (a) the investor is also a national of a non-Party and submits or has submitted a claim with respect to the same measure or series of measures under any agreement between the respondent Party and that non-Party; or
- (b) the investment of the investor in the territory of the respondent Party is held indirectly through an investor of a non-Party, and the investor of the non-Party submits or has submitted a claim with respect to the same measure or series of measures under any agreement between the respondent Party and that non-Party.

ARTICLE III. ARTICLE X.19: CONDITIONS PRECEDENT TO SUBMISSION OF A CLAIM TO ARBITRATION

1. The disputing parties shall hold consultations in an attempt to resolve the issue amicably before an investor may submit a claim to arbitration. Consultations shall be held within 30 days of the submission of the notice of intent to submit a claim to arbitration under subparagraph 2(c), unless the disputing parties otherwise agree. The place of consultation shall be the capital of the respondent Party unless the disputing parties otherwise agree.

2. An investor may submit a claim to arbitration under Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise) only if:

- (a) the investor and, where a claim is made under paragraph 2 of Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise), the enterprise, consent to arbitration in accordance with the procedures set out in this Agreement;
- (b) at least six months have elapsed since the events giving rise to the claim;
- (c) the investor has delivered to the respondent Party a written notice of its intent to submit a claim to arbitration at least 90 days prior to submitting the claim, which notice shall specify:
 - (i) the name and address of the investor and, where a claim is made under paragraph 2 of Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise), the name and address of the enterprise,
 - (ii) the provisions of this Agreement alleged to have been breached and any other relevant provisions,
 - (iii) the legal and the factual basis for the claim, including the measures at issue, and
 - (iv) the relief sought and the approximate amount of damages claimed;

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- (d) the investor has delivered evidence establishing that it is an investor of the other Party with its notice of intent to submit a claim to arbitration under subparagraph 2(c);

and

- (e) in the case of a claim submitted under paragraph 1 of Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise):
 - (i) not more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage thereby, and
 - (ii) the investor and, where the claim is for loss or damage to an interest in an enterprise of the respondent Party that is a juridical person that the investor owns or controls directly or indirectly, the enterprise waive their right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceedings with respect to the measure of the respondent Party that is alleged to be a breach referred to in Article X.18, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the respondent Party;
- (f) in the case of a claim submitted under paragraph 2 of Article X.18 (Claim by an Investor of a Party on its Own Behalf or on Behalf of an Enterprise):
 - (i) not more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage thereby, and
 - (ii) both the investor and the enterprise waive their right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceedings with respect to the measure of the respondent Party that is alleged to be a breach referred to in Article X.18, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the respondent Party.

3. A consent and waiver required under paragraph 2 shall be delivered to the respondent Party and shall be included in the submission of a claim to arbitration. A waiver from the enterprise under subparagraphs 2(e)(ii) or 2(f)(ii) shall not be required only if a respondent Party has deprived the investor of control of an enterprise.

ARTICLE IV. ARBITRATION

ARTICLE X.20: SUBMISSION OF A CLAIM TO

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1. An investor that meets the conditions precedent in Article X.19 (Conditions Precedent to Submission of a Claim to Arbitration) may submit a claim to arbitration under:

- (a) the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the respondent Party and the Party of the investor are parties to the ICSID Convention;
- (b) the Additional Facility Rules of ICSID, provided that either the respondent Party or the Party of the investor, but not both, is a party to the ICSID Convention; or
- (c) the UNCITRAL Arbitration Rules.

2. The Commission shall have the power to make rules supplementing the applicable arbitral rules and may amend any supplemental rules of its own making. Such rules shall be binding on a Tribunal established under this Section, and on individual arbitrators serving on such a Tribunal.

3. The arbitration rules applicable under paragraph 1 shall govern the arbitration, except to the extent modified by this Agreement and as supplemented by any rules adopted by the Commission under paragraph 2.

4. A claim is submitted to arbitration under this Section when:

- (a) the request for arbitration under paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General of ICSID;
- (b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General of ICSID; or
- (c) the notice of arbitration under Article 3 of the UNCITRAL Arbitration Rules is received by the respondent Party.

5. Each Party shall notify the other Party by diplomatic note of the place of delivery of notices and other documents.

(a)

(b) Article X.21: Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Section. Failure to meet any of the conditions precedent in Article X.19 (Conditions Precedent to Submission of a Claim to Arbitration) shall nullify that consent.

2. The consent given in paragraph 1 and the submission by an investor of a claim to arbitration shall satisfy the requirement of:

- (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute; and
- (b) Article II of the New York Convention for an agreement in writing.

Section 4.02

Section 4.03 ARTICLE X.22: ARBITRATORS

1. Except in respect of a Tribunal established under Article X.24 (Consolidation), and unless the disputing parties agree otherwise, the Tribunal shall comprise three arbitrators. One arbitrator shall be appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, shall be appointed by agreement of the disputing parties.

2. Arbitrators shall have expertise or experience in public international law, international investment or international trade rules, or the resolution of disputes arising under international investment or international trade agreements. Arbitrators shall be independent of, and not be affiliated with or take instructions from, either disputing party.

3. If the disputing parties do not agree on the remuneration of the arbitrators before the constitution of the Tribunal, the prevailing ICSID rate for arbitrators shall apply.

4. If a Tribunal, other than a Tribunal established under Article X.24 (Consolidation), has not been constituted within 90 days after the date that a claim is submitted to arbitration, either disputing party may ask the Secretary-General of ICSID to appoint, in his or her discretion and, to the extent practicable, in consultation with the disputing parties, the arbitrator or arbitrators not yet appointed, except that the presiding arbitrator shall not be a national of either Party.

Article X.23: Agreement to Appointment of Arbitrators

1. For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator based on paragraph 2 of Article X.22 (Arbitrators) or on a ground other than nationality:

- (a) the respondent Party agrees to the appointment of each individual member of a Tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;
- (b) an investor referred to in paragraph 1 of Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise) may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only if the disputing investor agrees in writing to the appointment of each member of the Tribunal; and
- (c) an investor referred to in paragraph 2 of Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise) may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only if the investor and the enterprise agree in writing to the appointment of each member of the Tribunal.

Article X.24: Consolidation

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1. A Tribunal established under this Article shall be established under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Section.
2. Where a Tribunal established under this Article is satisfied that claims submitted to arbitration under Article X.20 (Submission of a Claim to Arbitration) have a question of law or fact in common, the Tribunal may, in the interest of fair and efficient resolution of the claims and after hearing the disputing parties, by order:
 - (a) assume jurisdiction over, and hear and determine together, all or part of the claims; or
 - (b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others.
3. A disputing party that seeks an order under paragraph 2 shall request that the Secretary-General of ICSID establish a Tribunal and shall specify in the request:
 - (a) the name of the respondent Party or investors against which the order is sought;
 - (b) the nature of the order sought; and
 - (c) the grounds on which the order is sought.
4. The disputing party shall deliver a copy of the request to the respondent Party or investors against which the order is sought.
5. Within 60 days of receipt of the request, the Secretary-General of ICSID shall establish a Tribunal comprising three arbitrators. The Secretary-General of ICSID shall appoint one member who is a national of the respondent Party, one member who is a national of the Party of the investors that submitted the claims, and a presiding arbitrator who is not a national of either Party.
6. Where a Tribunal has been established under this Article, an investor that has submitted a claim to arbitration under Article X.20 (Submission of a Claim to Arbitration) and that has not been named in a request made under paragraph 3 may make a written request to the Tribunal that it be included in any order made under paragraph 2, and shall specify in the request:
 - (a) the name and address of the investor;
 - (b) the nature of the order sought; and
 - (c) the grounds on which the order is sought.
7. An investor referred to in paragraph 6 shall deliver a copy of its request to the disputing parties named in a request under paragraph 3.

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8. A Tribunal established under Article X.20 (Submission of a Claim to Arbitration) shall not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established or instructed under this Article has assumed jurisdiction.

9. On application of a disputing party, a Tribunal established under this Article, pending its decision under paragraph 2, may order that the proceedings of a Tribunal established under Article X.20 (Submission of a Claim to Arbitration) be stayed unless the latter Tribunal has already adjourned its proceedings.

Article X.25: Documents to, and Participation of, the Other Party

1. The respondent Party shall deliver to the other Party to this Agreement a copy of the notice of intent to submit a claim to arbitration and other documents no later than 30 days after the date that such documents have been delivered to the respondent Party. The other Party shall be entitled, at its cost, to receive from the respondent Party a copy of the evidence that has been tendered to the Tribunal, copies of pleadings filed in the arbitration, and written argument of the disputing parties. The Party receiving such information shall treat the information as if it were a respondent Party.

2. The other Party shall have the right to attend any hearings held under this Section. Upon written notice to the disputing parties, the other Party may make submissions to a Tribunal on a question of interpretation of this Agreement.

Article X.26: Place of Arbitration

The disputing parties may agree on the place of arbitration under the arbitral rules applicable under paragraph 1 of Article X.20 (Submission of a Claim to Arbitration). If the disputing parties fail to reach agreement, the Tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of either Party or of a non-Party that is a party to the New York Convention.

Article X.27: Public Access to Hearings and Documents

1. Any Tribunal award under this Section shall be publicly available, subject to the redaction of confidential information. All other documents submitted to, or issued by, the Tribunal shall be publicly available unless the disputing parties otherwise agree, subject to the redaction of confidential information.

2. Hearings held under this Section shall be open to the public. The Tribunal may hold portions of hearings *in camera* to the extent necessary to ensure the protection of confidential information.

3. A disputing party may disclose to other persons in connection with the arbitral proceedings such unredacted documents as it considers necessary for the preparation of its case, but it shall ensure that those persons protect the confidential information in such documents.

4. The Parties may share with officials of their respective national and sub-national governments all relevant unredacted documents in the course of dispute settlement under this

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Chapter, but they shall ensure that those persons protect any confidential information in such documents.

5. To the extent that a Tribunal's confidentiality order designates information as confidential and a Party's law on access to information requires public access to that information, the Party's law on access to information shall prevail. However, a Party should endeavour to apply its law on access to information so as to protect information designated confidential by the Tribunal.

6. Nothing in this Section shall be construed to require a Party to furnish or allow access to information that it may withhold in accordance with Article [X.02] (Exceptions – National Security) or Article [X.05] (Exceptions – Disclosure of Information).

Article X.28: Submissions by a third party

1. A Tribunal shall have the authority to consider and accept written submissions from a person or entity that is not a disputing party and that has a significant interest in the arbitration. The Tribunal shall ensure that any third-party submission does not disrupt the proceedings and does not unduly burden or unfairly prejudice either disputing party.

2. An application to the Tribunal for leave to file a third-party submission, and the filing of a submission if allowed by the Tribunal, shall be made in accordance with Annex X.28.

(a) Article X.29: Governing Law

1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law. An interpretation by the Commission of a provision of this Agreement shall be binding on a Tribunal established under this Section, and any award under this Section shall be consistent with such interpretation.

2. Where a respondent Party asserts as a defence that the measure alleged to be a breach is within the scope of a reservation or exception set out in Annex I or Annex II, on request of the respondent Party, the Tribunal shall request the interpretation of the Commission on the issue. Within 60 days of the delivery of the request, the Commission shall submit in writing its interpretation to the Tribunal. The interpretation shall be binding on the Tribunal. If the Commission fails to submit its interpretation within 60 days, the Tribunal shall decide the issue.

(b) Article X.30: Expert Reports

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, and unless both disputing parties disagree, a Tribunal may appoint experts to report to it in writing on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing party, subject to such terms and conditions as the disputing parties may agree.

Article X.31: Interim Measures of Protection and Final Award

1. A Tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the Tribunal's jurisdiction is made fully effective, including

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an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. A Tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise). For purposes of this paragraph, an order includes a recommendation.

2. Where a Tribunal makes a final award against the respondent Party, the Tribunal may award, separately or in combination, only:

- (a) monetary damages and any applicable interest; and
- (b) restitution of property, in which case the award shall provide that the respondent Party may pay monetary damages and any applicable interest in lieu of restitution.

The Tribunal may also award costs in accordance with the applicable arbitration rules.

3. Subject to paragraph 2, where a claim is made under paragraph 2 of Article X.18 (Claim by an Investor of a Party on Behalf of an Enterprise):

- (a) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise;
- (b) an award of restitution of property shall provide that restitution be made to the enterprise; and
- (c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

(c) 4. A Tribunal may not award punitive damages.

Article X.32: Finality and Enforcement of an Award

1. An award made by a Tribunal shall have no binding force except between the disputing parties and in respect of that particular case.

2. Subject to paragraph 3 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

3. A disputing party may not seek enforcement of a final award until:

- (a) in the case of a final award made under the ICSID Convention:
 - (i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award, or
 - (ii) revision or annulment proceedings have been completed; and
- (b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules:

LIMITE

- (i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award, or
- (ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

4. Each Party shall provide for the enforcement of an award in its territory.

5. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention.

Article X.33: Receipts under Insurance or Guarantee Contracts

ARTICLE V.

ARTICLE VI. IN AN ARBITRATION UNDER THIS SECTION, A RESPONDENT PARTY SHALL NOT ASSERT AS A DEFENCE, COUNTERCLAIM, RIGHT OF SETOFF, OR FOR ANY OTHER REASON THAT THE DISPUTING INVESTOR HAS RECEIVED OR WILL RECEIVE, PURSUANT TO AN INSURANCE OR GUARANTEE CONTRACT, INDEMNIFICATION OR OTHER COMPENSATION FOR ALL OR PART OF ITS ALLEGED DAMAGES.

Article X.34: Exclusions

The dispute settlement provisions of this Section and of Chapter [XY] (Dispute Settlement) do not apply to the matters referred to in Annex X.34 (Exclusions from Dispute Settlement).

Annex X.28

Submissions by a third party

1. The application for leave to file a third-party submission shall:
 - (a) be made in writing, dated and signed by the applicant, and include the applicant's address and other contact details;
 - (b) be no longer than five typed pages;
 - (c) describe the applicant, including, where relevant, its membership and legal status (*e.g.*, company, trade association or other non-governmental organization), its general objectives, the nature of its activities, and any parent organization (including any organization that directly or indirectly controls the applicant);
 - (d) disclose whether the applicant has any affiliation, direct or indirect, with any disputing party;

LIMITE

- (e) identify any government, person or organization that has provided any financial or other assistance in preparing the submission;
 - (f) demonstrate that the applicant has a significant interest and specify the nature of this interest in the arbitration;
 - (g) identify the specific issues of fact or law in the arbitration that the applicant will address in its written submission;
 - (h) explain why the Tribunal should accept the submission; and
 - (i) be made in a language of the arbitration.
2. The submission filed by a third party shall:
- (a) be dated and signed by the person filing the submission;
 - (b) be concise, and in no case longer than 20 typed pages, including any appendices;
 - (c) set out a precise statement supporting the applicant's position on the issues; and
 - (d) only address matters within the scope of the dispute.

Annex X-34.1

Exclusions from Dispute Settlement

1. A decision by Canada following a review under the *Investment Canada Act* is not subject to the dispute settlement provisions of Section B of this Chapter or of Chapter [XY] (Dispute Settlement).
2. A decision by a Party to prohibit or restrict the acquisition of an investment in its territory by an investor of the other Party, or its investment, pursuant to Article [X.02] (Exceptions – National Security) shall not be subject to the dispute settlement provisions of Section B of this Chapter or of Chapter [XY] (Dispute Settlement).] CAN

CHAPTER ON CROSS-BORDER TRADE IN SERVICES
CETA NEGOTIATIONS

Article X-01: Scope

1. This Chapter applies to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party, including measures affecting:

- (a) the production, distribution, marketing, sale and delivery of a service;
- (b) the purchase or use of, or payment for, a service;
- (c) the access to and use of, in connection with the supply of a service, services which are required to be offered to the public generally.

2. This Chapter does not apply to:

[\[\(a\) audio-visual services;](#)

Comment: resolution linked to discussions on culture

[\(b\) national maritime cabotage and,\] EU](#)

Comment: resolution linked to discussions on the Annex on International Maritime Transport

[\[\(c\) financial services as defined in Chapter XX \(Financial Services\);\] CAN](#)

Comment: resolution linked to discussions on financial services chapter

(d) air services and related services in support of air services, other than

- (i) aircraft repair and maintenance services when an aircraft is withdrawn from service;
- (ii) the selling and marketing of air transport services;
- (iii) computer reservation system (CRS) services;
- [\[\(iv\) ground handling services](#)
- [\(v\) airport operation services\]EU](#)

(e) procurement by a Party, as defined in Chapter X (Government Procurement);

(f) subsidies or grants provided by a Party [\[or a state enterprise\]CAN](#), including government-supported loans, guarantees and insurance.

Nothing in this Chapter shall be construed to impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in its territory, or to confer any right on that national with respect to that access or employment.

Article X-02: National Treatment

LIMITE

1. Each Party shall accord to service suppliers and services of the other Party treatment no less favourable than that it accords [, in like circumstances,] CAN to its own [like] EU service suppliers and services.

[2. The treatment accorded by a Party under paragraph 1 means, with respect to measures adopted or maintained by [a sub-national government] CAN, treatment no less favourable than the most favourable treatment accorded, [in like circumstances] CAN, by that [sub-national government] CAN to [its own like] EU service suppliers and services of the Party of which it forms a part.]

Comment: Articles 3 to 5 originally proposed by the EU will be discussed by the Parties following agreement on NT and definition of “sub-national/regional.”

[Article X-03: Formal Requirements

Nothing in Article X-02 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes formal requirements in connection with the supply of a service, provided that such requirements do not [materially impair the benefits accruing under this Chapter] CAN [subject to the requirement that these measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade] EU. Such measures include requirements:

Comment: To be discussed jointly with Investment group

- (a) to obtain a license, registration, certification or authorization in order to supply a service or as a membership requirement of a particular profession, such as requiring membership in a professional organization or participation in collective compensation funds for members of professional organizations;
- (b) for a service provider to have a local agent for service or maintain a local address;
- (c) to speak the national language or hold a driver’s license;
- (d) that a service supplier:
 - (i) post a bond or other form of financial security;
 - (ii) establish or contribute to a trust account;
 - (iii) maintain a particular type and amount of insurance;
 - (iv) provide other similar guarantees; or
 - (v) provide access to records.]

Article X-04: Most-Favoured-Nation Treatment

1. Each Party shall accord to service suppliers and services of the other Party treatment no less favourable than that it accords [, in like circumstances,] CAN to [like] EU service suppliers and services of a non-Party.

2. The obligations set by paragraph 1 of this provision shall not apply to treatment granted:

- a) under existing or future measures providing for recognition

LIMITE

[b) under any international agreement or arrangement relating wholly or mainly to taxation].

Comment: EU to review (b) in light of taxation provisions

Article X-05: Market Access

Neither Party may adopt or maintain, either on the basis of its entire territory or on the basis of the territory of [a sub-national government] CAN, measures that impose limitations on:

- (a) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;
- (b) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) the total number of service operations or the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test.

Article X-06: Reservations

1. Articles X-02 (National Treatment), X-03 (Most-Favoured-Nation Treatment) and X-04 (Market Access) do not apply to:

- (a) any existing non-conforming measure that is maintained by a Party at:
 - (i) the level of the European Union, as set out in its Schedule to Annex I;
 - (ii) the national level of government, as set out by that Party in its Schedule to Annex I;
 - (iii) a provincial, territorial, or regional level of government, as set out by that Party in its Schedule to Annex I; or
 - (iv) a local level of government.
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles X-02 (National Treatment), X-03 (Most-Favoured-Nation Treatment) and X-04 (Market Access).

2. Articles X-02 (National Treatment), X-03 (Most-Favoured-Nation Treatment) and X-04 (Market Access) do not apply to measures that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.

Article X-07: Definitions

For purposes of this Chapter:

cross-border supply of services is defined as the supply of a service:

LIMITE

- (a) from the territory of a Party into the territory of the other Party
- (b) in the territory of a Party to the service consumer of the other Party

but does not include the supply of a service in the territory of a Party by a [covered] CAN investment as defined in Chapter XY (Investment – [relevant article]) [in that territory] CAN;

Comment: resolution linked to investment text

aircraft repair and maintenance services mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;

computer reservation system services mean services supplied by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

selling and marketing of air transport services mean opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions;

service supplier means a person that supplies or seeks to supply a service.

Mutual Recognition of Professional Qualifications

Article 1. Objectives and Scope

1. This Chapter establishes the framework to facilitate a fair, transparent and consistent regime for the mutual recognition of professional qualifications by the Parties and determines the general conditions for the negotiation of agreements on the mutual recognition of professional qualifications (MRAs).
2. This chapter applies to professions which are regulated in both Parties, including in all or some EU Member States and in all or some Provinces and Territories of Canada.
3. No Party may accord recognition in a manner that would constitute a means of discrimination in the application of its criteria for the authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services.
4. An MRA adopted pursuant to this Chapter shall apply throughout the entire territories of the EU and Canada, as defined in Article X Geographical Scope of Application of Chapter Y.

Article 2 Definitions

Jurisdiction means the territory of Canada and of each of the Member States of the European Union insofar as this Agreement applies in these territories in accordance with Article X Geographical Scope of Application in Chapter Y.

Comment: CAN notes that the definition of jurisdiction may need to be reviewed based on outcome of the Institutional chapter.

Negotiating Entity means a person or body entitled or empowered to negotiate an MRA.

Professional experience means effective and lawful practice of a service activity.

Professional qualifications mean the qualifications attested by evidence of formal qualification and/or professional experience.

Relevant Authority means any authority or body, designated pursuant to legislative, regulatory or administrative provisions to recognize qualifications and authorize the practice of a profession in a jurisdiction;

Regulated profession means a service activity, the exercise of which, including the use of a title or designation, is subject to the possession of specific qualifications, by virtue of legislative, regulatory or administrative provisions.

Article 3 Negotiation of an agreement on the mutual recognition of professional qualifications

a) The Parties shall encourage the Relevant Authorities or professional bodies, as appropriate, in their respective jurisdictions to develop and provide to the Joint Committee on Mutual Recognition (the Joint Committee) joint recommendations on proposed MRAs.

b) A recommendation shall:

LIMITE

i) provide an assessment of the potential value of an MRA, on the basis of criteria such as the existing level of market openness, industry needs, and business opportunities (e.g. the number of professionals likely to benefit from the MRA), the existence of other MRAs in the sector, and expected gains in terms of economic and business development.

ii) provide an assessment as to the compatibility of their respective licensing regimes and the intended approach for the negotiation of an MRA.

c) in light of each Party's consultations with its respective Relevant Authorities, the Joint Committee shall, within a reasonable period of time, review the recommendation with a view to ensuring its consistency with the requirements of this Chapter. Where these requirements are satisfied, the Joint Committee shall establish the necessary steps to negotiate and each Party shall inform its respective Relevant Authorities.

d) the Negotiating Entities shall thereafter pursue the negotiation and submit a draft MRA text to the Joint Committee.

e) the Joint Committee will thereafter review the draft MRA to ensure its consistency with the Agreement.

f) If in the view of the Joint Committee the MRA is consistent with the Agreement, the Joint Committee shall adopt the MRA, [by means of a decision, which shall be] conditional upon subsequent notification to the Committee by each Party of the fulfillment of their respective internal requirements. [The decision shall become binding on the Parties] upon notification to the Committee by each Party.

Comment: The issue of "decision" to be discussed in the Institutional Chapter.

Article 4 Recognition

a) The recognition of professional qualifications provided by an MRA shall allow the beneficiary to take up and pursue in the territory of the host jurisdiction professional activities in accordance with the terms and conditions specified in the MRA.

Where the professional qualifications of a service supplier in a Party are recognised by the other Party pursuant to an MRA, the Relevant Authorities of the host jurisdiction shall give this service supplier treatment no less favourable than that accorded [CA: in like circumstances] to [EU: its own like] service suppliers which are certified or attested in its own jurisdiction.

Comment: Wording to be adjusted in accordance to definition of national treatment/MFN adopted in the CBTS chapter

(b) Recognition under an MRA cannot be conditioned upon:

- (i) a service supplier meeting a citizenship or any form of residency requirement, or
- (ii) a service supplier's education, experience or training having been acquired in the Party's own jurisdiction.

Article 5 Joint Committee on Cooperation for the Recognition of Qualifications

LIMITE

a) On entry into force of this Agreement, a Joint Committee responsible for the implementation of Article XY of this Chapter will be established.

The Joint Committee shall:

- (i) be composed, [co-managed] and co-chaired by Canada and the EU;
- (ii) comprise representatives of each Party which must be different from the Relevant Authorities or professional bodies mentioned in Article 3a), the list of which will be communicated through exchange of letters.

[CA: (iii) include as part of Canada's delegation, representatives of Canada's Provinces and Territories].

(iii) meet within one year after this Agreement enters into force, and thereafter as necessary or as agreed;

(iv) determine its own rules of procedure;

(v) facilitate the exchange of information regarding laws, regulations, policies and practices concerning standards or criteria for the authorization, licensing or certification of regulated professions;

(vi) make publicly available information regarding the negotiation and implementation of MRAs;

(vii) report to the [EU: CETA Commission], on the progress of the negotiation and implementation of MRAs; and

(viii) as appropriate, provide information and complement the guidelines set out in the Annex to this Chapter.

Article 6 Guidelines for the Negotiation and Conclusion of Agreements on the Mutual Recognition of Professional Qualifications

As part of the framework of cooperation to achieve recognition of qualifications, the Parties set forth in Annex XX non-binding guidelines with respect to the negotiation and conclusion of MRAs.

Article 7 Contact Points

As required, each Party shall establish one or more contact points for the administration of this Chapter.

ANNEX X Y

Guidelines for Agreements on the Mutual Recognition of Professional Qualifications (MRAs)

Introduction

This Annex contains guidelines to provide practical guidance for and to facilitate the negotiation of MRAs with respect to regulated professions. These guidelines are non-binding and they do not modify or affect the rights and obligations of the Parties under this Agreement.

The examples listed under the various sections of these guidelines are provided by way of illustration.

Form and Content of the Agreement

This section sets out various issues that may be addressed in any negotiations and, if so agreed, included in final MRAs. It outlines some basic ideas on what might be required of foreign professionals seeking to take advantage of an MRA.

1. Participants

The parties to the MRA should be clearly stated.

2. Purpose of Agreement

The purpose of the MRA should be clearly stated.

3. Scope of the MRA

The MRA should set out clearly:

- i) the scope of the MRA, in terms of the specific professional titles and activities which it covers;
- ii) who is entitled to use the professional titles concerned;
- iii) whether the recognition mechanism is based on formal qualifications, a licence obtained in the home jurisdiction, or on some other requirement(s); and
- iv) whether the MRA covers temporary and/or permanent access to the profession concerned.

4. Mutual Recognition Provisions

The MRA should clearly specify the conditions to be met for the recognition of qualifications in each jurisdiction and the level of equivalence agreed.

The following four-step process should be considered to simplify and facilitate the recognition of the qualifications.

Four-Step Process for the Recognition of Qualifications

Step One: Verification of Equivalency

The Negotiating Entities should verify the overall equivalence of the scopes of practice or qualifications of the regulated profession in their respective jurisdictions.

The examination of qualifications should entail the collection of all relevant information pertaining to the scope of practice rights related to a legal competency to practice or to the qualifications required for a specific regulated profession in the respective jurisdictions.

Consequently, the Negotiating Entities should:

- i) identify activities or groups of activities covered by the scope of practice rights of the regulated profession; and
- ii) identify the qualifications required in each jurisdiction. These may include but are not limited to the following elements:
 - a) the minimum level of education required (e.g. entry requirements, length of study, subjects studied);
 - b) the minimum level of experience required (e.g. location, length and conditions of practical training or supervised professional practice prior to licensing, framework of ethical and disciplinary standards);
 - c) examinations passed (especially examinations of professional competency);
 - d) the extent to which qualifications from one jurisdiction are recognised in the other jurisdiction; and,
 - e) the qualifications which the Relevant Authorities in each jurisdiction are prepared to recognise for instance, by listing particular diplomas or certificates issued, or by reference to particular minimum requirements to be certified by the Relevant Authorities of the jurisdiction of origin, including whether the possession of a certain level of qualification would allow recognition for some activities of the scope of practice but not others (level and length of education, major educational focuses, overall subjects and areas).

There is an overall equivalence between the scope of practice rights or the qualifications of the regulated profession where there are no substantial differences in this regard between jurisdictions.

Step Two: Evaluation of Substantial Differences

There exists a substantial difference in the scope of qualifications required to exercise a regulated profession, in cases of:

- i) important differences in the essential knowledge, and

- ii) significant differences in the duration or content of the training between jurisdictions.

There exists a substantial difference in the scope of practice when:

- i) one or more professional activities do not form part of the corresponding profession in the home jurisdiction
- ii) these activities are subject to specific training in the host jurisdiction and,
- iii) the training for these activities in the host jurisdiction covers substantially different matters from those covered by the applicant's qualification.

Step Three: Compensatory Measures

Should the Negotiating Entities determine that there is a substantial difference in the scope of practice rights or of formal qualifications between the jurisdictions, they may determine compensatory measures to bridge the gap.

A compensatory measure may take the form of, *inter alia*, an adaptation period or, if required, an aptitude test.

Compensatory measures should be proportionate to the substantial difference which they seek to address. The Negotiating Entities should also evaluate any practical professional experience obtained in the home jurisdiction to see whether such experience is sufficient to remedy, in whole or in part, the substantial difference in the scope of practice rights or formal qualifications between the jurisdictions, prior to determining a compensatory measure.

Step Four: Identification of the Conditions for Recognition

Once the assessment of the overall equivalency of the scopes of practice rights or qualifications of the regulated profession is completed, the Negotiating Entities should specify in the MRA:

- i) the legal competency required to practice the regulated profession;
- ii) the qualifications for the regulated profession;
- iii) whether compensatory measures are necessary;
- iv) the extent to which professional experience may compensate for any substantial differences;
- v) a description of any compensatory measure, including the use of any adaptation periods or aptitude tests.

5. Mechanisms for Implementation

The MRA should state:

- i) the rules and procedures to be used to monitor and enforce the provisions of the agreement;
- ii) the mechanisms for dialogue and administrative co-operation between the parties to the MRA; and
- iii) the means for individual applicants to address any matters arising from the interpretation or implementation of the MRA.

LIMITE

As a guide to the treatment of individual applicants, the MRA should include details on:

- i) the point of contact for information on all issues relevant to the application (e.g. name and address of Relevant Authorities, licensing formalities, information on additional requirements which need to be met in the host jurisdiction);
- ii) the length of procedures for the processing of applications by the Relevant Authority of the host jurisdiction;
- iii) the documentation required of applicants and the form in which it should be presented;
- iv) acceptance of documents and certificates issued in the host jurisdiction in relation to qualifications and licensing;
- v) the procedures of appeal to or review by Relevant Authorities ; and

The MRA should also include the following commitments by Relevant Authorities:

- i) that requests about the measures will be promptly dealt with;
- ii) that adequate preparation time will be provided where necessary;
- iii) that any exams or tests will be arranged with reasonable frequency;
- iv) that fees to applicants seeking to take advantage of the terms of the MRA will be proportional to the costs to the host jurisdiction; and
- v) that they will supply information on any assistance programmes in the host jurisdiction for practical training, and any commitments of the host jurisdiction in that context.

6. Licensing and Other Provisions in the Host Jurisdiction

Where applicable, the MRA should also set out the means by which, and the conditions under which, a licence is actually obtained following the establishment of eligibility, and what this licence entails (e.g., a licence and its contents, membership of a professional body, use of professional and/or academic titles). Any licensing requirements other than qualifications should be explained and should include requirements relating to:

- (i) have an office address, maintain an establishment or be a resident;
- (ii) language skills;
- (iii) proof of good character;
- (iv) professional indemnity insurance;
- (v) compliance with host jurisdiction's requirements for use of trade/firm names; and
- (vi) compliance with host jurisdiction ethics (e.g., independence and good conduct); and

In order to ensure the transparency of the system, the MRA should include the following details for each host jurisdiction:

- (i) the relevant laws and regulations to be applied (e.g. disciplinary action, financial responsibility, liability);
- (ii) the principles of discipline and enforcement of professional standards, including disciplinary jurisdiction and any consequential effects on practicing professional activities;
- (iii) the means for the ongoing verification of competence; and
- (iv) the criteria for, and procedures relating to, revocation of the registration.

7. Revision of the Agreement

LIMITE

If the MRA includes terms under which it can be reviewed or revoked, the details should be clearly stated.

8. Transparency

The Parties should:

- i) make publicly available the text of MRAs which have been concluded and,
- ii) notify the other Party of any modifications to qualifications that may affect the application or implementation of an MRA. Where possible, the other Party should be given an opportunity to comment on such modifications.

Definitions

For purposes of this Annex:

Adaptation period means the pursuit of a regulated profession in the host jurisdiction under the responsibility of a qualified person, such period of supervised practice possibly being accompanied by further training. This period of supervised practice shall be subject to an assessment. The detailed rules governing the adaptation period, its assessment and the professional status of the person under supervision shall be set out, as appropriate, in the host jurisdiction's laws and regulations;

Aptitude test means a test limited to the professional knowledge of applicants, made by the Relevant Authorities of the host jurisdiction with the aim of assessing the ability of applicants to pursue a regulated profession in that jurisdiction;

Scope of practice means an activity or group of activities covered by a regulated profession.

DOMESTIC REGULATION

CHAPTER V - REGULATORY FRAMEWORK

SECTION II - DOMESTIC REGULATION

ARTICLE X.1 - SCOPE AND DEFINITIONS

1. This Chapter / Section applies to measures adopted or maintained by a Party relating to licensing requirements and procedures, qualification requirements and procedures that:

[a] affect cross-border supply of services as defined in Article X of the CBTS Chapter

b) [affect]EU [relate to]CA an [investment or investor]CA [establishment]EU, as defined in Article X of [the General Definitions]CA and

c) affect the supply of a service through the presence of a natural person in the territory of the other Party, as defined in Article X of this Agreement, [to the extent that a Party has undertaken specific commitments and to the extent that these specific commitments apply to Chapter X.]

Comment: Parties to review drafting

2. This Chapter / Section does not apply to licensing requirements and procedures and to qualification requirements and procedures:

(a) that a Party adopts or maintains with respect to sectors, sub-sectors, or activities as set out in its Schedule to Annex II.

(b) pursuant to an existing non-conforming measure that is maintained by a Party as set out in its Schedule to Annex I.

2. These disciplines shall not apply to the following economic activities:

[Note: sectoral exclusions, in addition to those exclusions already provided by paragraph 2 (i.e. uncommitted sectors), are to be included here depending on (i) the specific commitments to be made; and (ii) the specific sectoral or regulatory disciplines that are agreed upon]

3. For the purposes of this Chapter / Section:

"Authorization" refers to the granting of permission to a person [relating to carrying out an economic activity in the territory of a Party,] and includes a licence, qualification, or other similar form of determination.

"Authorization refers to the granting of a permission to a person to supply a service [or to establish in the territory of a Party / carry out an economic activity] and includes a licence, qualification or similar form of determination that such a person is qualified to supply a service".

LIMITE

"Licensing requirements" are substantive requirements, other than qualification requirements, that must be complied with in order to obtain, amend or renew an authorization;

"Licensing procedures" are administrative or procedural rules, including for the amendment or renewal of a licence, that must be adhered to in order to demonstrate compliance with licensing requirements;

"Qualification requirements" are substantive requirements relating to competency that must be complied with in order to obtain, amend or renew an authorization;

"Qualification procedures" are administrative or procedural rules, that must be adhered to in order to demonstrate compliance with qualification requirements;

as they are applied to a person by a Party.

"Competent authority" is any central, regional or local government and authority or non-governmental body in the exercise of powers delegated by central or regional or local governments or authorities, that grants an authorization.

ARTICLE X.2 - LICENSING AND QUALIFICATION REQUIREMENTS

1. Each Party shall ensure that licensing and qualification requirements and procedures shall be based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner.

2. The criteria referred to in paragraph 1 shall be:

- a) clear and transparent
- b) objective;
- c) established in advance and made publicly accessible

3. Each Party shall ensure that an authorisation shall be granted as soon as the competent authority determines that the conditions have been met, and once granted enters into effect without undue delay in accordance with the terms and conditions specified therein.

4. Each Party shall maintain or institute judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected investor or service supplier, for a prompt review of, and where justified, appropriate remedies for, administrative decisions [affecting]EU [relating to]CA an [investment or investor]CA [establishment]EU or affecting cross border supply of services or temporary presence of natural persons for business purposes. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, each Party shall ensure that the procedures in fact provide for an objective and impartial review.

ARTICLE X.3 - LICENSING AND QUALIFICATION PROCEDURES

1. Each Party shall ensure that licensing and qualification procedures are as simple as possible and do not unduly complicate or delay the supply of a service [or the exercise of the economic activity].

LIMITE

2. Any authorisation fees which applicants may incur in relation to their application shall be reasonable and commensurate with the costs incurred and do not in themselves restrict the supply of a service [or the exercise of the economic activity].
3. Authorisation fees do not include payments for auction, the use of natural resources, royalties, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.
4. Each Party shall ensure that the procedures used by and the decisions of the competent authority in the authorisation process are impartial with respect to all applicants. The competent authority should reach its decision in an independent manner and in particular should not be accountable to any supplier or investor for which the authorisation is required.
5. Where specific time periods for applications exist, an applicant shall be allowed a reasonable period for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. Where possible, applications should be accepted in electronic format under similar conditions of authenticity as paper submissions.
6. Authenticated copies should be accepted, where considered appropriate, in place of original documents.
7. Each Party shall ensure that the processing of an application, including reaching a final decision, is completed within a reasonable timeframe from the submission of a complete application. Each Party should establish the normal timeframe for processing of an application.
8. In the case where an application is considered to be incomplete, the competent authority shall, within a reasonable period of time, inform the applicant, identify the additional information required to complete the application, and provide the opportunity to correct deficiencies.
9. If an application is rejected by the competent authority, the applicant shall be informed in writing and without undue delay. Upon request, the applicant shall also be informed of the reasons for rejection of the application and of the timeframe for an appeal against the decision. An applicant should be permitted, within reasonable time limits, to resubmit an application.

* *

COMPUTER SERVICES (EU)

POSTAL AND COURIER SERVICES (EU)

INTERNATIONAL MARITIME TRANSPORT SERVICES

**EU CANADA WORKING TEXT ON INTERNATIONAL MARITIME
TRANSPORT SERVICES**

ANNEX XY²²

INTERNATIONAL MARITIME TRANSPORT SERVICES

1. This Annex applies to measures adopted or maintained by a Party relating to [affecting] international maritime transport services.²³
2. For the purposes of this Annex:
 - (a) "international maritime transport" includes door-to-door or multimodal transport operations and, to this effect, the use of other modes of transport;
 - (b) "multi-modal transport" means the carriage of goods using more than one mode of transport, involving a sea-leg, under a single transport document;
 - (c) "international maritime transport service supplier" means any [CA: enterprise][EU: juridical person] or a branch registered and having substantive business operations in the territory of a Party and engaged in the operation of ships in international maritime transport. For the purposes of this Annex, branch includes a branch in the territory of a Party that is owned or controlled by an enterprise of a non-party;
 - (d) shipping companies established outside the European Union or Canada and controlled by nationals of a Member State of the European Union or of Canada, respectively, shall also be beneficiaries of the provisions of this Annex, if their vessels are registered in accordance with the legislation in that Member State or in Canada and flying the flag of a Member State or Canada²⁴;
 - (e) "maritime cargo handling services" means the work performed by stevedore companies, including terminal operators, but does not include the work performed by dock labour, when this workforce is organized independently of the stevedoring or

²² Adequate provisions will need to be developed to ensure that the Annex applies to both chapters. Otherwise, a separate chapter for the rules of this Annex can be considered. Bracketed text denotes issues requiring further discussion.

²³ Nothing in this Annex shall be interpreted to apply to fishing vessels as defined under a Party's domestic law.

²⁴ This provision also applies to commitments on establishment and this should be taken into account if the EU and CAN decides that the investment chapter should regulate the establishment of international maritime transport suppliers of each Party.

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terminal operator companies. The activities covered are the performance, organization and supervision of:

- (i) the loading/discharging of cargo to/from a ship;
- (ii) the lashing/unlashing of cargo; and
- (iii) the reception/delivery and safekeeping of cargo before shipment or after discharge;

(f) "customs clearance services" (alternatively 'customs house brokers' services') means activities consisting of carrying out, on behalf of another party, customs formalities concerning import, export or through transport of cargo, irrespective of whether this service is the main or secondary activity of the service provider;

(g) "container station and depot services" means activities consisting of storing containers, whether in port areas or inland, stuffing/stripping/repairing containers and making them available for shipment;

(h) "maritime agency services" means activities consisting of representing, as an agent, within a given geographic area, the business interests of one or more shipping lines or shipping companies, for the following purposes:

- (i) marketing and sales of maritime transport and related services, from quotation to invoicing, issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information;
- (ii) acting on behalf of the companies in organizing the call of the ship or taking control of cargo when required;

(i) "maritime freight forwarding services" means the activity of organizing and monitoring shipments on behalf of shippers, through providing such services as the arrangement of transport and related services, consolidation and packing of cargo, preparation of documentation and provision of business information;

(j) "feeder services" means the pre- and onward transportation of international cargo by sea [CA: or inland waters], including containerized, break bulk and dry/liquid bulk cargo, between ports located in a Party.

3. [Subject to reservations for non-conforming measures listed by a Party in its schedule to Annexes I and II, the Parties undertake the following obligations]:

CAN and the EU to ensure that reservations taken in respect of IMTS are properly incorporated into Annex I+2

- (a) A Party shall grant ships engaged in international maritime transport and flying the flag of a Party²⁵, or international maritime transport service suppliers of a Party, unrestricted access to international maritime markets and trades on a commercial and non-discriminatory basis;

²⁵ For the European Union, flying the flag of a Party means flying the flag of a Member State of the European Union.

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- (b) a Party shall not adopt or maintain measures that deny ships engaged in international maritime transport and flying the flag of the other Party, or international maritime transport service suppliers of the other Party, the treatment accorded by that Party [CA: in like circumstances]CAN to its own [EU: like] EU ships or service suppliers or those of any third country, whichever is the better, with regard to: access to ports, the use of infrastructure and services of ports such as towage and pilotage, and the use of maritime auxiliary services,²⁶ as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading;^{27,28}
- (c) a Party shall not introduce cargo-sharing arrangements in future agreements with third countries concerning international maritime transport services, including dry and liquid bulk and liner trades and, where these arrangements exist in previous agreements, such arrangements will be terminated upon the entry into force of this Agreement;
- (d) [CA: a Party shall permit maritime transport service suppliers of the other Party to establish in the territory of that Party under conditions of establishment and operation no less favourable than those accorded in like circumstances to its own [EU: like] service suppliers or those of any third country, whichever are the better, including for the purpose of operating ships flying the flag of that Party;]
- (d) [EU: a Party shall permit international maritime transport service suppliers of the other Party to have an establishment in its territory under conditions of establishment and operation no less favourable than those accorded [CA: in like circumstances] to its own like service suppliers or those of any third country, whichever are the better;]
- (e) a Party shall not adopt or maintain measures that prevent international maritime transport services- suppliers of the other Party from directly contracting with providers of other modes of transport for the provision of multi-modal transport services;
- (f) [EU: upon the entry into force of this Agreement, a Party shall abolish and abstain from introducing any unilateral measures and administrative, technical and other obstacles which could constitute a disguised restriction or have discriminatory effects on the free supply of services in international maritime transport;]

²⁶ For the purposes of this Annex, maritime auxiliary services are: maritime cargo handling services, customs clearance services, container station and depot services, maritime agency services, maritime freight forwarding services, storage and warehousing, [EU: rental of vessels with crew (CPC 7213), maintenance and repair of vessels (part of CPC 8868) and pushing and towing services (CPC 7214)].

²⁷ For greater certainty, this provision does not oblige a Party to require private sector terminal operators and providers of maritime auxiliary services to accord access to and use of their services on non-discriminatory terms and conditions.

²⁸ Paragraph 3(b) does not apply to ships or international maritime transport services suppliers that are subject to the *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*.

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(g) a Party shall permit international maritime transport service suppliers of the other Party to [CA: re-position owned/leased] empty containers, not being carried as cargo against payment, between ports of that Party.

(h) a Party shall, subject to the authorisation of the competent authority, permit international maritime transport service suppliers of the other Party to provide feeder services between ports of that Party. [CA: For Canada, feeder services are cabotage and are reserved to duty-paid, Canadian-registered ships.]

KEY: EU proposal; Canada proposal; Agreed Text

FINANCIAL SERVICES

Position of article subject to placement

ARTICLE XI: SCOPE AND DEFINITIONS

[1. This Chapter applies to measures adopted or maintained by a Party [CA: relating to] [EU: affecting]:

- (a) financial institutions of the other Party;
- (b) investors of the other Party, and investments of such investors, in financial institutions in the Party's territory; and

Comment: (b) depends on definitions in the Investment chapter.

- (c) cross-border trade in financial services.

2. Articles X (Investment – Transfers), X (Investment – Expropriation and Compensation), X (Investment – Special Formalities and Information Requirements), X (Investment – Denial of Benefits), X (Investment – Health, Safety and Environmental Measures) and X (Cross-Border Trade in Services – Denial of Benefits) are hereby incorporated into and made a part of this Chapter. Section B of Chapter X (Investment) is hereby incorporated into and made part of this Chapter solely for claims that a Party has breached Articles X (Investment – Transfers), X (Investment – Expropriation and Compensation) or X (Investment – Denial of Benefits) as incorporated into this Chapter.]

2. For the purpose of this Chapter

- (a) 'financial service' means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

A. Insurance and insurance-related services

1. direct insurance (including co-insurance):

- (a) life;
- (b) non-life;

2. reinsurance and retrocession;

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3. insurance intermediation, such as brokerage and agency; and
 4. services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.
- B. Banking and other financial services (excluding insurance):
1. acceptance of deposits and other repayable funds from the public;
 2. lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;
 3. financial leasing;
 4. all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
 5. guarantees and commitments;
 6. trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (a) money market instruments (including cheques, bills, certificates of deposits);
 - (b) foreign exchange;
 - (c) derivative products including futures and options;
 - (d) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (e) transferable securities;
 - (f) other negotiable instruments and financial assets, including bullion;
 7. participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
 8. money broking;
 9. asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 10. settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
 11. provision and transfer of financial information, and financial data processing and related software;
 12. advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (1) through (11), including credit

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reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

- (b) 'financial service supplier' means any [EU: **natural or juridical**] person of a Party that is engaged in the business of supplying a financial service [CA: **within the territory of that Party**]. [EU: **The term 'financial service supplier' does not include a public entity**].
 - (c) 'public entity' means [EU:
 - 1. **a government,**] a central bank or a monetary authority of a Party or [EU: **an entity**] [CA: **any financial institution**] owned or controlled by a Party[,EU: **that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or**
 - 2. **a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.**]
 - (d) 'new financial service' means with respect to a Party a financial service that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party [and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory];
 - (e) 'self-regulatory organisation' means any non-governmental body, including any securities or futures exchange or market, clearing agency, other organisation or association, that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions.
- [CA: (x) 'cross-border financial service supplier of a Party' means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such service.
- (x) 'cross-border trade in financial services' or 'cross-border supply of financial services' means the supply of a financial service:
 - (a) from the territory of a Party into the territory of the other Party.
 - (b) in the territory of a Party by a person of that Party to a person of the other Party, or
 - (c) by a national of a Party in the territory of the other Party,

Comment: EU would not cover (c) with FS chapter, but with Temporary Entry.

but does not include the supply of a service in the territory of a Party by an investment in that territory.]

- (x) 'financial institution' means any financial intermediary or other enterprise that is authorised to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

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- (x) ‘financial institution of the other Party’ means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;
- (x) ‘investment’ means ‘investment’ as defined in Article X (Investment – Definitions_) except that, with respect to “loans” and “debt instruments” referred to in that Article:
 - a. A loan to or debt instrument issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and
 - b. A loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument of a financial institution referred to in subparagraph (a) is not an investment;

For greater certainty:

- c. A loan to, or debt instrument issued by, a Party or a state enterprise thereof is not an investment; and
 - d. A loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment if such loan or debt instrument meets the criteria for investments as set out in Article X (Investment – Definitions);
- (x) ‘investor of a Party’ means “investor of a Party” as defined in Article X (Investment – Definitions);
 - (x) ‘person of a Party’ means “person of a Party” as defined in Article X (Initial Provisions and General Definitions – Definitions of General Application) and, for greater certainty, does not include a branch of an enterprise of a non-Party.

[CA: **ARTICLE X: NATIONAL TREATMENT**

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords to its own investors, in like circumstances, with respect to the establishment, acquisition, management, conduct, operation, and sale or other disposition of financial institutions and investments in financial institutions in its territory.
2. Each Party shall accord to financial institutions of the other Part and to investments of investors of the other Party in financial institutions treatment no less favourable than that it accords to its own financial institutions and to investments of it own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.

This is identical to the NT provisions in the Investment Chapter.

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3. For purposes of the national treatment obligations in paragraph 1 of Article 5 (Cross-Border Trade), a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

This is identical to the NT provisions in the Cross-Border Services Chapter.

4. The treatment that a Party is required to accord under paragraphs 1, 2 and 3 means, with respect to measures adopted or maintain by a sub-national government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that sub-national government to investors in financial institutions, financial institutions, investors of investors in financial institutions and financial service suppliers of the Party of which it forms a part.

This is identical to the NT provisions in the Investment and Cross-Border Services Chapters,

Canada will consider whether these provision can be incorporated from the relevant Chapters.

ARTICLE X: MOST-FAVOURLED-NATION TREATMENT

1. Each Party shall accord to [EU: investors of the other Party, financial institutions of the other Party, investments of investors in financial institutions and cross-border] financial service suppliers of the other Party treatment no less favourable than that it accords [CA: in like circumstances] to [like] investors, financial institutions, investments of investors in financial institutions and cross-border financial service suppliers of a non-Party.
2. The obligations set by paragraph 1 of this provision shall not apply to treatment granted under existing or future measures providing for recognition of prudential measures.]

ARTICLE X: RECOGNITION OF PRUDENTIAL MEASURES

1. A Party may recognise prudential measures of a non-Party in the application of measures covered by this Chapter. Such recognition may be:
 - a. Accorded unilaterally.
 - b. Achieved through harmonisation or other means; or
 - c. Based upon an agreement or arrangement with the non-Party.
2. A Party according recognition of prudential measures shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or will be equivalent regulation, oversight, implementation of regulation and, if appropriate, procedures concerning the sharing of information between the Parties.
3. If a Party accords recognition of prudential measures under subparagraph 1(c) and the circumstances in paragraph 2 exist, the Party shall provide adequate opportunity to

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the other Party to negotiate accession to the agreement or arrangement or to negotiate a comparable agreement or arrangement.

[EU: Article X.3: Market Access

1. Neither Party shall adopt or maintain, [with respect to financial institutions of the other Party, investors of the other Party seeking to establish such institutions,] either on the basis of its entire territory or on the basis of the territory of [CA: a sub-national government] measures that:

(a) impose limitations on:

(i) the number of [CA: financial institutions,] whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;

(ii) the total value of [financial service] transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(iii) the total number of [financial service] operations or the total quantity of [financial services] output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test [²⁹] EU;

(iv) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding [in financial institutions] or the total value of individual or aggregate foreign investment [in financial institutions];

(v) the total number of natural persons that may be employed [in a particular [financial services] sector] or that a [financial institution] may employ and who are necessary for, and directly related to, the performance of [a specific financial service in the form of numerical quotas or the requirement of an economic needs test.

(b) restrict or require specific types of legal entity or joint venture through which [a financial institution] may perform an economic activity.] EU

3. A Party may impose terms, conditions and procedures for the authorisation of the establishment and expansion of a commercial presence in so far as they do not circumvent the Party's obligation under paragraph 1 and they are consistent with the other obligations of the Chapter/Annex/Agreement.

4. For greater certainty, nothing in [this] Article [Market Access] shall be construed to prevent a Party from requiring financial institutions to supply certain financial services through separate legal entities where under the laws of the Party the range of financial services supplied by the financial institution may not be supplied through a single entity.

²⁹ Subparagraphs 1(a) (i), (ii) and (iii) do not cover measures taken in order to limit the production of an agricultural product.

ARTICLE X: CROSS-BORDER TRADE

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the financial services specified in Annex X.
2. Each Party shall permit persons located in its territory, and its national wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define “doing business” and “solicitation” for the purposes of this Article, as long as such definitions are not inconsistent with the obligation of paragraph 1.]

ARTICLE 39: PRUDENTIAL CARVE-OUT

1. Nothing in this Agreement shall prevent a Party from adopting or maintaining [EU: reasonable] measures for prudential reasons, including:

- (a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier;
- (b) ensuring the integrity and stability of a Party's financial system.

[CA: Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's obligations under those provisions.]

[EU: 2. These measures shall not be more burdensome than necessary to achieve their aim].

Comment:

[CA: 3. Notwithstanding Article X (Investment-Transfers), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory and good-faith application of measures relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. A Party may adopt or enforce measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable

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discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services.]

5. [EU: Nothing in this Agreement shall be construed as requiring] [CA: This Chapter does not require] a Party [to furnish or allow access to] [to disclose] information relating to the affairs and accounts of individual consumers or [CA: cross-border financial service suppliers] or any confidential [CA: or proprietary] information [CA: in the possession of public entities] [CA: which, if disclosed, would impede law enforcement or otherwise be contrary to public interest or prejudice legitimate commercial interests of particular enterprises].
6. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.
- [7. Subject to Article X [National Treatment], a Party may, for prudential reasons, prohibit a particular financial service or activity. Such a prohibition may not apply to all financial services or to a complete financial services sub-sector, such as banking.]

ARTICLE [40: EFFECTIVE AND TRANSPARENT REGULATION]

[CA: 1. The Parties recognise that transparent regulations and policies governing the activities of financial institutions and financial service suppliers are important in facilitating both access of financial institutions and financial service suppliers to, and their operations in, each other's markets. Each Party commits to promoting regulatory transparency in financial services.

2. Each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective and impartial manner.]

1. Each Party shall [CA: to the extent practicable] [EU: make its best endeavours to provide] [CA: (a) publish] in advance [EU: to all interested persons] any [EU: measure] [CA: regulation] of general application [CA: relating to the subject matter of this Chapter] that [EU: it] [EU: the Party] proposes to adopt [CA: ; (b) provide interested persons and the other Party] [EU: in order to allow an] [CA: reasonable] opportunity [EU: for such persons] to comment on [EU: the measure.] [CA: such proposed regulations; and (c) allow reasonable time between publication of final regulations and their effective date;] [EU: Such measure shall be provided:

- (a) by means of an official publication; or
- (b) in other written or electronic form.]

[CA: and these requirements shall replace those set out in Article X (Transparency – Publication).]

2. Each Party shall ensure that its regulatory authorities make available to interested persons [EU: its] [CA: their] requirements, including any documentation required for completing applications relating to the supply of financial services.

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On the request of an applicant, [EU: the concerned Party] [CA: a regulatory authority] shall inform the applicant of the status of its application. If [EU: the concerned Party] [CA: that authority] requires additional information from the applicant, it shall [CA: promptly] notify the applicant [EU: without undue delay].

[EU: Each Party shall make its best endeavours to ensure that internationally agreed standards for regulation and supervision in the financial services sector and for the prevention of tax fraud and evasion are implemented and applied in its territory. Such internationally agreed standards are, *inter alia*, the Basel Committee's "Core Principle for Effective Banking Supervision", the International Association of Insurance Supervisors' "Insurance Core Principles", the International Organisation of Securities Commissions' "Objectives and Principles of Securities Regulation", the OECD's "Agreement on exchange of information on tax matters", the G-20 "Statement on Transparency and exchange of information for tax purposes" and the Financial Action Task Force's "Forty Recommendations on Money Laundering" and "Nine Special recommendations on Terrorist Financing".

The Parties also take note of the "Ten Key Principles for Information Exchange" promulgated by the Finance Ministers of the G7 Nations, and will take all steps necessary to try to apply them in their bilateral contacts.]

[CA: 3.A regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a cross-border financial service supplier or a financial institution of the other Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall promptly notify the applicant and shall endeavour to make the decision within a reasonable time.

4. Each Party shall maintain or establish appropriate mechanisms that will promptly respond to inquiries from interested persons regarding measures of general application covered by this Chapter.]

ARTICLE 41: SELF-REGULATORY ORGANISATIONS

If a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in or have access to a self-regulatory organization to provide a financial service in or into the territory of that Party, or grants privileges or advantages when providing financial services through such self-regulatory organizations, then the requiring Party shall ensure that the self-regulatory organization observes the obligations of this Chapter.

ARTICLE 42: PAYMENT AND CLEARING SYSTEMS

Under terms and conditions that accord national treatment, each Party shall grant to [EU: financial services suppliers] [CA: financial institution] of the other Party established in its territory access to payment and clearing systems operated by public entities[, or to payment

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and clearing systems operated by an entity pursuant to governmental authority delegated to it by a Party, as well as] to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to a Party's lender of last resort facilities.

ARTICLE 43: NEW FINANCIAL SERVICES

1. Each Party shall permit a financial [EU: **service supplier**] [CA: **institution**] of the other Party, on request or notification to the relevant regulator, where required, to supply any new financial service that the first Party would permit its own financial [EU: **service suppliers**] [CA: **institutions**] to supply under its domestic law in like circumstances.

2. A Party may determine the institutional and juridical form through which the service may be supplied and may require authorisation for the provision of the service. Where such authorisation is required, a decision shall be made within a reasonable time and the authorisation may only be refused for prudential reasons.

3. This Article does not prevent a financial institution of a Party from applying to the other Party to consider authorising the supply of a financial service that is not supplied within either Party's territory. That application is subject to the domestic law of the Party receiving the application and is not subject to the obligations of this Article.

[4. Each Party shall permit a financial [EU: **service supplier**] of the other Party, on request or notification to the relevant regulator, where required, to supply any new financial service that the first Party would permit its own financial [EU: **service suppliers**] to supply under its domestic law in like circumstances **for the sectors which it has committed.**]

[CA: **ARTICLE X: SENIOR MANAGEMENT AND BOARDS OF DIRECTORS**

1. Neither Party may require financial institutions of the other Party to engage natural persons of any particular nationality as senior managerial or other essential personnel.
2. Neither Party may require that more than a simple majority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

ARTICLE X: NON-CONFORMING MEASURES

1. Articles X(National Treatment), X (Most-Favoured Nation Treatment), X (Right of Establishment) and X (Senior Management and Boards of Directors) do not apply to:
 - a. Any existing non-conforming measure that is maintained by a Party at the level of:
 - i. The national government, as set out in Section I of its Schedule to Annex XX (Financial Services Annex), or
 - ii. A sub-national government;

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- b. The continuation or prompt renewal of any non-conforming measure referred to in sub-paragraph (a); or
 - c. An amendment to any non-conforming measures referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles X(National Treatment), X (Most-Favoured Nation Treatment), X (Right of Establishment) and X (Senior Management and Boards of Directors).
2. Article X (Cross-Border Trade) does not apply to:
- a. Any existing non-conforming measure that is maintained by a Party at the level of:
 - i. The national government, as set out in Section I of its Schedule to Annex XX (Financial Services Annex), or
 - ii. A sub-national government;
 - b. The continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
 - c. An amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed upon the entry into force of this Agreement, with Article X (Cross-Border Trade).
3. Articles X(National Treatment), X (Most-Favoured Nation Treatment), X (Right of Establishment), X (Cross-Border Trade) and X(Senior Management and Boards of Directors) do not apply to any non-conforming measure that a Party adopts or maintains in accordance with Section II of its Schedule to Annex XX (Financial Services Annex).
4. Section III of each Party's Schedule to Annex XX sets out certain specific commitments by that Party.
5. Where a Party has set out a reservation to Article X (Investment – National Treatment), X (Investment – Most-Favoured-Nation Treatment), X (Cross-Border Trade in Services – National Treatment) or X (Cross-Border Trade in Services – Most-Favoured-Nation Treatment) in its Schedule to Annex I or II, the reservation also constitutes a reservation to Article X (National Treatment) or X (Most-Favoured-Nation Treatment), as the case may be, to the extent that the measure, sector, sub-sector or activity set out in the reservation is covered by this Chapter.]

[EU: ARTICLE X: DATA PROCESSING

1. Each Party shall permit a financial service supplier of the other Party to transfer information in electronic or other form, into and out of its territory, for data processing

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where such processing is required in the ordinary course of business of such financial service supplier.

2. Each Party, reaffirming its commitment to protect fundamental rights and freedom of individuals shall maintain adequate safeguards to protect privacy, in particular with regard to the transfer of personal data.]

ARTICLE [45: SPECIFIC EXCEPTIONS]

1. [EU: Nothing in this Section shall be construed as preventing] [CA: This Chapter does not prevent] a Party, including its public entities, from exclusively conducting or providing in its territory activities or services forming part of a public retirement plan or statutory system of social security. [EU: except when those activities may be carried out, as provided by the Party's domestic regulation, by financial service suppliers in competition with public entities or private institutions].
2. Nothing in this [EU: Agreement] [CA: Chapter or Chapter X (Investment), Chapter X (Cross-Border Trade in Services), Chapter X (Telecommunications), Chapter X (Temporary Entry of Business Persons), Chapter X (Competition Policy, Monopolies and State Enterprises) or Chapter X (Electronic Commerce)] applies to [non-discriminatory measures of general application taken] [EU: activities conducted by a central bank or monetary authority or] by any [other] public entity in pursuit of monetary [CA: and related credit policies] or exchange rate policies. [CA: This paragraph shall not affect a Party's obligations under Article X (Investment – Performance Requirements) with respect to measures covered by Chapter X (Investment) or Article X (Investment – Transfers).]
3. [Nothing in this Section shall be construed as preventing] [This Chapter does not prevent] a Party, including its public entities, from exclusively conducting or providing in its territory activities or services for the account or with the guarantee or using the financial resources of the Party, or its public entities [except when those activities may be carried out, as provided by the Party's domestic regulation, by financial service suppliers in competition with public entities or private institutions.]

[CA: **ARTICLE X: FINANCIAL SERVICES COMMITTEE**

1. The Parties hereby establish a Financial Services Committee (the “Committee”). The principal representative of each Party shall be an official of the Party's authority, responsible for financial services set out in Annex X.
2. The Committee shall:
 - a. Supervise the implementation of this Chapter and its further elaboration;
 - b. Consider issues regarding financial services that are referred to it by a Party; and
 - c. Participate in the dispute settlement procedures under Article X (Dispute Settlement).

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3. The Committee shall meet annually, or as it otherwise agrees, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each meeting.

ARTICLE X: CONSULTATIONS

1. A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Committee.
2. Officials of the authorities specified in Annex X shall participate in the consultations under this Article.
3. A Party may request that regulatory authorities of the other Party participate in consultations under this Article regarding that other Party's measures of general application which may affect the operations of financial institutions or cross-border financial service suppliers in the requesting Party's territory.
4. A regulatory authority participating in consultations pursuant to paragraph 2 need not disclose information or take any action that would interfere with specific regulatory, supervisory, administrative or enforcement matters.
5. Where a Party requires information for supervisory purposes concerning a financial institution in the other Party's territory or a cross-border financial service supplier in the other Party's territory, the Party may approach the competent regulatory authority in the other Party's territory to seek the information.
6. A Party is not required to derogate from its domestic law regarding sharing information among financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties.

ARTICLE X: DISPUTE SETTLEMENT

1. The Provisions of Chapter X (Dispute Settlement), as modified by this Article, apply to the settlement of disputes arising under this Chapter.
2. Consultations held under Article X (Consultations) regarding a measure or matter constitute consultations under Article X (Dispute Settlement – Consultations), unless the Parties otherwise decide. If the matter has not been resolved within 45 days of the beginning of consultations under Article X (Consultations) or 90 days of the delivery of the request for consultations under Article X (Consultations), whichever is earlier, the complaining Party may request in writing that a panel be established.
3. Each panellist appointed under this Chapter shall have the qualifications required by Article X (Dispute Settlement – Qualification of Panelists) with the exception of subparagraph x(x) of that Article, which requires that each panellist shall not be a national of a Party, nor have their usual place of residence in the territory of a Party, nor be employed by either of them. In addition, each panellist shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

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4. If a panel finds that a measure is inconsistent with the obligations of this Agreement and the measure affects:
 - a. Only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;
 - b. The financial services sector and another sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector; or
 - c. Only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

ARTICLE X: INVESTMENT DISPUTES IN FINANCIAL SERVICES

1. Where an investor of a Party submits a claim under Article X (Investment – Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise) to arbitration under Section II of Chapter X (Investment) and the respondent Party invokes an exception under Article X (Prudential Carve-Out/Exceptions), on request of the respondent Party the Tribunal shall refer the matter in writing to the Committee for a decision in accordance with paragraph 2. The Tribunal may not proceed pending receipt of a decision or report under this Article.
2. In a referral under paragraph 1, the Committee shall decide the issue of whether and to what extent Article X (Prudential Carve-Out/Exceptions) is a valid defence to the claim of the investor. The Committee shall transmit a copy of its decision to the Tribunal and to the Commission. The decision is binding on the Tribunal.
3. Where the Committee has not decided the issue within 60 days of the receipt of the referral under paragraph 1, either Party may, within 10 days, request that a panel be established under Article X (Dispute Settlement – Establishment of a Panel) to decide the issue. The panel shall be constituted in accordance with Article X (Dispute Settlement). Further to Article X (Dispute Settlement – Panel Reports), the panel shall transmit its final report to the Committee and to the Tribunal. The report is binding on the Tribunal.
4. Where no request for the establishment of a panel pursuant to paragraph 3 has been made within 10 days after the 60-day period referred to in paragraph 3, the Tribunal may proceed to decide the issue.]

[EU: Article X.3: Market Access

1. Neither Party shall adopt or maintain, [with respect to financial institutions of the other Party, investors of the other Party seeking to establish such institutions,] either on the basis of its entire territory or on the basis of the territory of [a sub-national government] CAN, measures that:

(a) impose limitations on:

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(i) the number of [financial institutions,] CAN whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;

(ii) the total value of [financial service] transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(iii) the total number of [financial service] operations or the total quantity of [financial services] output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test [³⁰] EU;

(iv) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding [in financial institutions] or the total value of individual or aggregate foreign investment [in financial institutions];

(v) the total number of natural persons that may be employed [in a particular [financial services] sector] or that a [financial institution] may employ and who are necessary for, and directly related to, the performance of [a specific financial service in the form of numerical quotas or the requirement of an economic needs test.

(b) restrict or require specific types of legal entity or joint venture through which [a financial institution] may perform an economic activity.] EU

3. A Party may impose terms, conditions and procedures for the authorisation of the establishment and expansion of a commercial presence in so far as they do not circumvent the Party's obligation under paragraph 1 and they are consistent with the other obligations of the Chapter/Annex/Agreement.

4. For greater certainty, nothing in [this] Article [Market Access] shall be construed to prevent a Party from requiring financial institutions to supply certain financial services through separate legal entities where under the laws of the Party the range of financial services supplied by the financial institution may not be supplied through a single entity.

ARTICLE X: RIGHT OF ESTABLISHMENT

1. A Party shall permit an investor of the other Party that does not own or control a financial institution in the Party's territory to establish a financial institution permitted to supply financial services that such an institution may supply under the domestic law of the Party at the time of establishment,

without the imposition of numerical restrictions

or requirements to take a specific juridical form.

The obligation not to impose requirements to take a specific juridical form does not prevent a Party from imposing conditions or requirements in connection with the establishment or a particular type of entity chosen by an investor of the other Party.

2. A Party shall permit an investor of the other Party that owns or controls a financial institution in the Party's territory to establish such additional financial institutions as

³⁰ Subparagraphs 1(a) (i), (ii) and (iii) do not cover measures taken in order to limit the production of an agricultural product.

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may be necessary for the supply of the full range of financial services allowed under the domestic law of the Party at the time of establishment of the additional financial institutions. Subject to Article X (National Treatment), a Party may impose terms and conditions on the establishment of additional financial institutions and determine the institutional and juridical form that shall be used for the supply of specified financial services or the carrying out of specified activities.

3. The right of establishment under paragraphs 1 and 2 shall include the acquisition of existing entities.
4. [Subject to Article X (National Treatment), a Party may prohibit a particular financial service or activity. Such a prohibition may not apply to all financial services or to a complete financial services sub-sector, such as banking.]
5. For the purposes of this Article, and without prejudice to other forms of prudential regulation, a Party may require that an investor of the other Party be engaged in the business of providing financial services in the territory of the other Party.
6. For the purposes of this Article, “numerical restrictions” means limitations imposed, either on the basis of a regional subdivision or on the basis of the entire territory of a Party, on the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test.

CHAPTER X

TEMPORARY ENTRY [AND STAY] OF NATURAL PERSONS FOR BUSINESS PURPOSES

Article 1: General Principles

1. This Chapter reflects the preferential trading relationship between the Parties as well as the mutual objective to facilitate trade in services and investment by allowing temporary entry [and stay]EU to natural persons for business purposes and through ensuring transparency of the process.

Comment: Definition of natural persons is linked to the discussions in the institutional chapter. CAN wishes to include permanent residents in the scope of the commitments.

2. This Chapter applies to measures of the Parties concerning the temporary entry [and stay]EU into their territories of key personnel, contractual services suppliers, independent professionals and short term business visitors. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.
3. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Party under the terms of this Chapter. The sole fact of requiring a visa for natural persons of a certain country and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.
4. All other requirements of the Parties' laws and regulations regarding entry, stay, work and social security measures shall continue to apply, including regulations concerning period of stay, minimum wages as well as collective wage agreements.
5. Commitments on temporary entry [and stay]EU of natural persons do not apply in cases where the intent or effect of such movement is to interfere with or otherwise affect the outcome of any labour/management dispute or negotiation, or the employment of any natural person who is involved in such dispute.

Article [2]: General Obligations

1. Each Party shall allow temporary entry to natural persons for business purposes who comply with its immigration measures applicable to temporary entry under this Chapter.
2. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 1(1), and, in particular, shall apply those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

3. Any fees for processing applications for temporary entry shall be reasonable and commensurate with the costs incurred.

Article [3]: Provision of Information

1. Further to Chapter X (Transparency), and recognizing the importance to the Parties of transparency of temporary entry information, each Party shall, no later than six months after the date of entry into force of this Agreement, make available to the other Party explanatory material regarding the requirements for temporary entry under this Chapter that will enable business persons of the other Party to become acquainted with those requirements.
2. Where a Party collects and maintains data relating to temporary entry by category of business persons under this Chapter, the Party shall make available this data to the other Party on request, in accordance with its domestic law related to privacy and data protection.

Article [4]: Contact Points

1. The Parties hereby establish Contact Points:

- (a) in the case of Canada:

Director
Temporary Resident Policy
Immigration Branch
Citizenship and Immigration Canada

- (b) in the case of the European Commission:

The Director responsible for the implementation of this Chapter [to be completed]

- (c) in the case of the EU Member States:

Austria
*The Director responsible for the implementation of this Chapter
[to be completed]*

...

or their respective successors.

2. The Contact Points for Canada and the European Commission, and as appropriate the Contact Point(s) for EU Member States, shall exchange information as described in Article [3] and shall meet as required to consider matters pertaining to this Chapter, such as:
 - (a) the implementation and administration of this Chapter, **[including refusals to allow temporary entry] CAN**;
 - (b) the development and adoption of common criteria as well as interpretations for the implementation of the Chapter;
 - (c) the development of measures to further facilitate temporary entry of business persons; and
 - [(d) issues that shall be referred to the Joint Committee, including proposed modifications to this Chapter,]CAN**

Article [5]: [Review of Refusals/Mechanism]CAN

- [1. A Party may not initiate proceedings under Chapter XY (Dispute Settlement) regarding a refusal to grant temporary entry under this Chapter unless:
 - (a) the matter involves a pattern of practice;
 - (b) the business person of that Party has exhausted the normal administrative remedies regarding the particular matter.

2. The remedies referred to in paragraph (1) (b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.]CAN

Article [6]: Relation to Other Chapters

[No provision of this Agreement shall [be interpreted to] impose any obligation on a Party regarding its immigration measures, except as specifically identified in this Chapter and Chapters [Transparency] [Initial Provisions and Definitions], [Final Provisions] and [Dispute Settlement].]CAN

Article [8]: Definitions

. For the purpose of this Chapter:

- (a) ‘Key personnel’ means natural persons employed within a [juridical person] EU [enterprise]CAN of one Party, [other than a non-profit organisation,] EU and investors who are responsible for the setting-up or the proper control, administration and operation of an [establishment] EU [investment] CAN.

Comment: Parties to consider aligning the definition of juridical person/enterprise with the investment/establishment chapter.

‘Key personnel’ comprises ‘business visitors for [establishment] EU [investment] CAN purposes’ or ‘investors’, and ‘intra-corporate transferees’.

- (j) ‘Business visitors for [establishment] EU [investment] CAN purposes’ means natural persons working in a managerial or specialist position who are responsible for setting up an [establishment] EU [investment] CAN. They do not engage in direct transactions with the general public and do not receive remuneration from a source located within the host Party.

- (k) ‘Investors’ means natural persons who establish, develop, administer the operation of an investment in a capacity that is supervisory or executive, to which the business person has committed, or is in the process of committing, a substantial amount of capital.

- (iii) ‘Intra-corporate transferees’ means natural persons who have been employed by a [juridical person] EU [enterprise]CAN (to align with investment chapter

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throughout) of one Party or have been partners in it for at least one year and who are temporarily transferred to an [establishment] EU [investment] CAN (that may be a subsidiary, branch or head company of the enterprise) in the territory of the other Party. The natural person concerned must belong to one of the following categories:

1. Senior Personnel means natural persons working in a senior position within a [juridical person] EU [enterprise]CAN who:

(a) primarily direct the management of the [juridical person] EU [enterprise]CAN, or direct the [juridical person] EU [enterprise]CAN, a department or sub-division thereof; and

(b) exercise wide latitude in decision making, which may include having the authority personally to recruit and dismiss or taking other personnel actions (such as promotion or leave authorizations), and

(i) receive only general supervision or direction principally from higher level executives, the board of directors and/or stockholders of the business or their equivalent, or

(ii) supervise and control the work of other supervisory, professional or managerial employees and exercise discretionary authority over day-to-day operations.

2. Specialists means natural persons working within a [juridical person] EU [enterprise]CAN who possess:

5. uncommon knowledge of the [juridical person] EU [enterprise]CAN 's products or services and its application in international markets; or

6. an advanced level of expertise or knowledge of the [juridical person] EU [enterprise]CAN 's processes and procedures such as its production, research equipment, techniques or management.

In assessing such expertise or knowledge, Parties will consider abilities that are unusual and different from those generally found in a particular industry and that cannot be easily transferred to another individual in the short-term. Those abilities would have been obtained through specific academic qualifications or extensive experience with the [juridical person] EU [enterprise]CAN.

3. Graduate trainees means natural persons who:

1. possess a university degree; and
2. [have been employed by a juridical person of a Party for at least six month/one year; and] EU
3. are temporarily transferred to an [establishment] EU [investment] CAN in the territory of the other Party for career

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development purposes, or to obtain training in business techniques or methods.

- (b) ‘contractual services suppliers’ means natural persons employed by a juridical person of one Party which has no establishment in the territory of the other Party and which has concluded a *bona fide* contract (other than through an agency as defined by CPC 872) to supply services with a consumer in the latter Party requiring the presence on a temporary basis of its employees in that Party in order to fulfil the contract to provide services.
- (c) ‘independent professionals’ means natural persons engaged in the supply of a service and established as self-employed in the territory of a Party who have no establishment in the territory of the other Party and who have concluded a *bona fide* contract (other than through an agency as defined by CPC 872) to supply services with a consumer in the latter Party requiring their presence on a temporary basis in that Party in order to fulfil the contract to provide services.

Article [x]: Key Personnel

- 4. Each Party shall allow the temporary entry [and stay] of key personnel.
- 5. Each Party shall allow the employment of intra-corporate transferees [and investors] CAN of the other Party.
- 3. [Unless otherwise specified in its reservations in Annexes I and II]EU, a Party may not maintain or adopt limitations on the total number of key personnel of a Party allowed temporary entry, in the form of a numerical restriction or the requirement for an economic needs test.
- x. [Unless otherwise specified in Annexes I and II, a Party may not maintain or adopt measures providing for treatment less favourable than the treatment accorded to its own like natural persons.]EU
- x. The Parties understand that business visitors for [establishment] EU [investment] CAN purposes will not require a work permit or other prior approval procedures of similar intent.
- x. The maximum length of stay of key personnel shall be as follows:
 - a) Intra-corporate Transferees (specialists and senior personnel) – 3 years with a possible extension of 18 months³¹;
 - b) Intra-corporate Transferees (graduate trainees) – 1 year;
 - c) Investors – 1 year with possible extensions;
 - d) Business Visitors for [Establishment] EU [Investment] CAN Purposes – 90 days [within any six month period³²] EU.

³¹ The length of stay permitted under this Chapter may not be taken into consideration in the context of an application for citizenship in a Member State of the European Union.

³² [This is without prejudice to the rights granted under bilateral visa waiver agreements between EU Member States and Canada.] EU

Article [x]:
Contractual Services Suppliers and Independent Professionals

1. In accordance with Annex [...], each Party shall allow the temporary entry [and stay] EU of contractual services suppliers of the other Party, subject to the following conditions:
 - (a) The natural persons must be engaged in the supply of a service on a temporary basis as employees of a juridical person, [which has obtained a service contract for a period not exceeding twelve months]EU. The service contract shall comply with the laws, regulations and other legal requirements of the Party where the contract is executed.
 - (b) The natural persons entering the other Party must be offering such services as an employee of the juridical person supplying the services [for at least the year immediately preceding the date of submission of an application for entry into the other Party. In addition, the natural persons must possess, at the date of submission of an application for entry into the other Party, at least three years professional experience³³ in the sector of activity which is the subject of the contract.]EU
 - (c) The natural persons entering the other Party must possess (i) a university degree or a qualification demonstrating knowledge of an equivalent level³⁴ and (ii) professional qualifications where this is required to exercise an activity pursuant to the law, regulations or other requirements of the Party, where the service is supplied [the qualifications appropriate to the field of activity in which the service is supplied]CAN.
 - (d) The natural person shall not receive remuneration for the provision of services other than the remuneration paid by the juridical person employing the contractual service supplier during their stay in the territory of the other Party.
 - (e) Access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract. Entitlement to utilize the professional title of the Party where the service is provided may be granted, as required, by the Relevant Authority (as defined in Chapter [...] Mutual Recognition of Professional Qualifications), through a Mutual Recognition Agreement or otherwise.
 - (f) [The number of persons covered by the service contract shall not be larger than necessary to fulfil the contract, as it may be determined by the laws,

³³ Obtained after having reached the age of majority.

³⁴ Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory.

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regulations and legal requirements of the Party where the service is supplied.] EU

2. In accordance with Annex [...], each Party shall allow the temporary entry [and stay] EU of independent professionals of the other Party, subject to the following conditions:

- (a) The natural persons must be engaged in the supply of a service on a temporary basis as self-employed persons established in the other Party [and must have obtained a service contract for a period not exceeding twenty-four months]. The service contract shall comply with the laws, regulations and other legal requirements of the Party where the contract is executed.
- [(b) The natural persons entering the other Party must possess, at the date of submission of an application for entry into the other Party, at least six years professional experience in the sector of activity which is the subject of the contract.] EU
- (c) The natural persons entering the other Party must possess (i) a university degree or a qualification demonstrating knowledge of an equivalent level³⁵ and ii) professional qualifications where this is required to exercise an activity pursuant to the law, regulations or other requirements of the Party, where the service is supplied [the qualifications appropriate to the field of activity in which the service is supplied]CAN.
- (d) Access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract. Entitlement to utilize the professional title of the Party where the service is provided may be granted, as required, by the Relevant Authority (as defined in Chapter [...] Mutual Recognition of Professional Qualifications), through a Mutual Recognition Agreement or otherwise.

x. Unless otherwise specified in Annex XXX, a Party may not maintain or adopt limitations on the total number of natural persons of a Party in the form of numerical restrictions or an economic needs test.

x. [Unless otherwise specified in Annex XXXX, a Party may not maintain or adopt measures providing for treatment less favourable than the treatment accorded to its own like natural persons.]EU

x. The length of stay of contractual services suppliers and independent professionals shall be for a cumulative period of not more than twelve months[, with extensions possible,]CAN in any twenty-four month period or for the duration of the contract, whichever is less.

Article [...]: Short Term Business Visitors

2. Each Party shall allow, [in conformity with their respective legislation]EU, the temporary entry [and stay] EU in their territories of short-term visitors for business purposes with a view to carrying out the activities listed in Annex XXX.

provided that:

- (a) they are not engaged in selling their goods or services to the general public; and
- (b) they do not on their own behalf receive remuneration from a source located within the Party where they are staying temporarily; and
- (c) they are not engaged in the supply of a service in the framework of a contract concluded between a juridical person, [who has no commercial presence in the territory of the Party where the short-term visitors for business purposes are staying temporarily,] EU and a consumer there.

[2. The Parties understand that short term visitors for business purposes will not require a work permit [or other prior approval procedures of similar intent] EU [or other prior approval procedure]CAN to the extent that their activities will remain within the scope as defined in paragraphs 1 and 2 of this Article.]

- x. The maximum length of stay of short term business visitors shall be 90 days [in any six-month period.³⁶]EU

[Article []: Professionals*

Professionals, as defined in Article X-08, may seek temporary entry under Section D of Annex X-03, except the following professionals:

- (a) professionals in all health, education and social services sectors and related sectors, including:
 - (i) managers in health/education/social & community services;
 - (ii) physicians/dentists/optometrists/chiropractors/other health professions;
 - (iii) pharmacists, dietitians & nutritionists;
 - (iv) therapy & assessment professionals;
 - (v) nurse supervisors & registered nurses;
 - (vi) psychologists/social workers;
 - (vii) university professors & assistants;
 - (viii) college & other vocational instructors; and
 - (ix) secondary/elementary school teachers & counsellors;
- (b) professionals engaged in activities related to cultural industries as defined in Article X (Exceptions - Definitions) as well as:
 - (i) managers in libraries, archives, museums and art galleries; and
 - (ii) creative & performing artists;
- (c) recreation, sports and fitness program and service directors;
- (d) managers in telecommunication carriers;
- (e) managers in postal and courier services;
- (f) Managers in Manufacturing;
- (g) Managers in Utilities;
- (h) Managers in Construction and Transportation; and

³⁶ [This is without prejudice to the rights granted under bilateral visa waiver agreements between EU Member States and Canada.] EU

- (i) Judges, Lawyers and Notaries except foreign legal consultants.]

Article[]:Technicians*

Technicians, as defined in Article X-08, who may seek temporary entry under Section D of Annex X-03 are only:

- (a) civil engineering technologists and technicians;
- (b) electrical and electronics engineering technologists and technicians³⁷;
- (c) mechanical engineering technologists and technicians;
- (d) industrial engineering and manufacturing technologists and technicians;
- (e) construction inspectors and estimators;
- (f) engineering inspectors, testers and regulatory officers;
- (g) supervisors in the following fields: machining and related activities; printing and related activities; mining and quarrying; oil and gas drilling and service; mineral and metal processing; petroleum, gas and chemical processing and utilities; food, beverage and tobacco processing; plastic and rubber products manufacturing; forest products processing; and textile processing;
- (h) contractors and supervisors in the following fields: electrical trades and telecommunications; pipefitting trades; metal forming, shaping and erecting trades; carpentry trades; mechanic trades; heavy construction equipment crews; and other construction trades, installers, repairers and servicers;
- (i) electricians³⁸;
- (j) plumbers;
- (k) industrial instrument technicians and mechanics;
- (l) aircraft instrument, electrical and avionics mechanics, technicians and inspectors;
- (m) underground production and development miners;
- (n) oil and gas well drillers, servicers and testers;
- (o) graphic designers and illustrators;
- (p) interior designers;
- (q) chefs;
- (r) computer and information system technicians; and
- (s) international selling and purchasing agents]CAN

*Canadian request and offer to be discussed during market access discussions

[Section E – Spouses

1. Each Party shall grant temporary entry and provide a work permit or other authorization to the spouse of a natural person qualifying for temporary entry under Section B (Traders and Investors), Section C (Intra-Company Transferees) or Section D (Professionals and Technicians), provided said natural person exercises the right of temporary entry and the spouse otherwise complies with existing immigration measures applicable to temporary entry.
2. Neither Party may:
 - (a) as a condition for temporary entry under paragraph 1, require prior approval procedures, labour certification tests or other procedures of similar effect; or

³⁷ This includes electronic service technicians.

³⁸ This includes industrial electricians.

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- (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.
- 3. Notwithstanding paragraph 2, a Party may require the spouse of a natural person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose nationals would be affected with a view to avoiding the imposition of the requirement.]CAN

Annex on Short-Term Visitors for Business Purposes

(a) **Meetings and Consultations:** Natural persons attending meetings or conferences, or engaged in consultations with business associates;

(b) **Research and Design:** Technical, scientific and statistical researchers conducting independent research or research for an enterprise located in the territory of the other Party;

(c) **Marketing research:** Market researchers and analysts conducting [independent research or analysis or] research or analysis for an enterprise located in the territory of the other Party

(d) **Training seminars:** Personnel of an enterprise who enter the territory of the other Party to receive training in techniques and work practices employed by companies or organisations in that Party, provided that the training received is confined to observation, familiarisation and classroom instruction only;

(e) **Trade Fairs and Exhibitions:** Personnel attending a trade fair for the purpose of promoting their company or its products or services;

(f) **Sales:** Representatives of a service or goods supplier taking orders or negotiating the sale of services or goods or entering into agreements to sell services or goods for that supplier, but not delivering goods or supplying services themselves. They do not engage in making direct sales to the general public.

(g) **Purchasing:** Buyers purchasing goods or services for an enterprise, or management and supervisory personnel, engaging in a commercial transaction carried out in the territory of the other Party;

(h) After-Sales or After-Lease Service

Installers, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale or lease of commercial or industrial equipment or machinery, including computer software, purchased or leased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement.

[Distribution

Transportation operators transporting goods or passengers from the territory of a Party to the territory of the other Party or loading and transporting goods or passengers from the territory of a Party, with no unloading in that territory, to the territory of the other Party.

Customs brokers providing consulting services regarding the facilitation of the import or export of goods.

Commercial Transactions

Personnel engaging in a commercial transaction for an enterprise located in the territory of the other Party.

Financial services

Insurers, bankers or investment brokers engaging in commercial transactions for an enterprise located in the territory of the other Party where the provision of such financial services does not require the authorization of the competent authority of the Party.

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Tourism personnel

Tour and travel agents, tour guides or tour operators attending or participating in conventions or conducting a tour that has begun in the territory of the other Party.

Translation and Interpretation

Translators or interpreters performing services as employees of an enterprise located in the territory of another Party.]CAN

Telecommunications

Canada's proposed text

EU's proposed text

Article X.1: Scope of Application

1. This Chapter applies to measures adopted or maintained by a Party relating to telecommunications networks or services, subject to a Party's right to restrict the supply of a service in accordance with its Reservations in Annexes I and II.
2. [CA: This Chapter does not apply to any measure of a Party affecting the transmission by any means of telecommunications, including broadcast and cable distribution, of radio or television programming intended for reception by the public.]

[EU: This Chapter does not apply to any measure of a Party affecting the transmission by any means of telecommunications, including broadcast and cable distribution, of radio or television programming intended for reception by the public, but for greater certainty would not apply to the transmission of such programming between operators.]
3. Nothing in this Chapter shall be construed to:
 - (a) require a Party to authorize a service supplier of the other Party to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services, other than as specifically provided in this Agreement; or
 - (b) require a Party (or require a Party to compel any service supplier) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally.

Article X.2: Access to and Use of Public Telecommunications Transport Networks or Services

1. A Party shall ensure that [enterprises] of the other Party are accorded access to and use of public telecommunications transport networks or services on reasonable and non-discriminatory terms and conditions (including technical standards and specifications) and of a quality no less favourable than that accorded to any other enterprise).³⁹ This obligation shall be applied, *inter alia*, through paragraphs 2 through 6.
2. Each Party shall ensure that [CA: enterprises] of the other Party have access to and use of any public telecommunications transport network or service offered within or across its borders, including private leased circuits, and to this end shall ensure, subject to paragraphs 5 and 6, that such [CA: enterprises] are permitted to:

³⁹ **non-discriminatory** means treatment no less favourable than that accorded to any other [enterprise] when using like public telecommunications transport networks or services [in like circumstances];

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- (a) purchase or lease and attach terminal or other equipment which interfaces with the public telecommunications transport network;
 - (b) connect private leased or owned circuits with public telecommunications transport networks and services of that Party or with circuits leased or owned by another [CA: enterprise];
 - (c) use operating protocols of their choice; and
 - (d) perform switching, signaling, and processing functions.
3. Each Party shall ensure that [enterprises] of the other Party may use public telecommunications transport networks and services for the movement of information in its territory or across its borders, including for intra-corporate communications of such [enterprises], and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of either Party.
4. Further to Article X (Exceptions - General Exceptions), and notwithstanding the paragraph 3, a Party shall take appropriate measures to protect:
- (a) the security and confidentiality of telecommunications services, or
 - (b) the privacy of users of public telecommunications transport services,
- subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.
5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks or services other than as necessary to:
- (a) safeguard the public service responsibilities of suppliers of public telecommunications transport networks or services, in particular their ability to make their networks or services available to the public generally;
 - (b) protect the technical integrity of public telecommunications transport networks or services; or
 - (c) ensure that [enterprises] of another Party do not supply services limited by the Party's Reservations in Annexes I and II.
6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications transport networks or services may include:
- (a) restrictions on resale or shared use of such services;
 - (b) a requirement to use specified technical interfaces, including interface protocols, for connection with such networks or services;
 - (c) requirements, where necessary, for the inter-operability of such services;

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- (d) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks;
- (e) restrictions on connection of private leased or owned circuits with such networks or services or with circuits leased or owned by another [enterprise]; and
- (f) notification, registration and licensing.

Article X.3: Authorisation to Provide Telecommunications Services

1. Each Party should ensure that the authorisation of the provision of telecommunications services, wherever possible, is based upon a simple notification procedure.
2. Where a Party requires a supplier of public telecommunications transport networks or services to have a licence, or other type of authorisation:
 - (a) all the licensing or authorisation criteria and the period of time normally required to reach a decision concerning an application for a licence or authorisation shall be made publicly available;
 - (b) the decision on the application for the licence or other type of authorisation shall be made within a reasonable period of time;
 - (c) the reasons for the denial of a licence or authorisation shall be made known in writing to the applicant upon request;

Article X.4: Competitive Safeguards on Major Suppliers

1. Each Party shall maintain appropriate measures for the purpose of preventing suppliers that, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.
2. The anti-competitive practices referred to in paragraph 1 shall include:
 - (a) engaging in anti-competitive cross-subsidization [or margin squeeze]EU;
 - (b) using information obtained from competitors with anti-competitive results; and
 - (c) not making available to other service suppliers, on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

Comment [w1]: Canada agrees in principle to the EU proposal subject to final approval by Canadian competition authority.

[Article X.5: Access to Essential Facilities

1. Each Party shall ensure that a major supplier in its territory makes available its essential facilities, which may include, inter alia, network elements, operational support systems or support structures, to suppliers of telecommunications services of the other Party on reasonable non-discriminatory terms and conditions

2. Each Party may determine, in accordance with its laws and regulations, those essential facilities required to be made available in its territory.]CAN

Article X.5: Interconnection

1. Each Party shall ensure that any major supplier in its territory provides interconnection:
 - (a) at any technically feasible point in the network;
 - (b) under non-discriminatory terms, conditions (including technical standards and specifications) and rates;
 - (c) of a quality no less favourable than that provided for the own like services of such major supplier or for like services of non-affiliated service suppliers or of its subsidiaries or other affiliates;
 - (d) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that a supplier need not pay for network components or facilities that it does not require for the services to be supplied; and
 - (e) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.
2. Any supplier authorised to provide telecommunications services shall have the right to negotiate a new interconnection agreement with other providers of publicly available telecommunications networks and services. Each Party shall ensure that Major suppliers are required to establish a reference interconnection offer or negotiate interconnection agreements with other providers of telecommunications networks and services.
3. Each Party shall ensure that suppliers of public telecommunications transport services that acquire information from another such supplier during the process of negotiating interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.
4. Each Party shall ensure that the procedures applicable for interconnection to a major supplier shall be made publicly available.
5. Each Party shall ensure that major suppliers shall make publicly available either their interconnection agreements or their reference interconnection offers where it is appropriate.

Article X.6: Universal Service

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1. Each Party has the right to define the kind of universal service obligations it wishes to maintain.
2. Each Party shall ensure that any measure on universal service that it adopts or maintains is administered in a transparent, objective, non-discriminatory and competitively neutral manner. Each Party shall also ensure that any universal service obligation imposed by it is not more burdensome than necessary for the kind of universal service that the Party has defined.
3. All suppliers should be eligible to ensure universal service. When a supplier is to be designated as the provider of a universal service, the selection shall be made through an efficient, transparent and non-discriminatory mechanism.

ARTICLE X.7: SCARCE RESOURCES

1. Each Party shall administer its procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, in an objective, timely, transparent and non-discriminatory manner.
2. A Party's measures allocating and assigning spectrum and managing frequencies shall not be considered inconsistent with [Article X (Cross-Border Trade in Services – Market Access), as it applies to either Chapter X (Investment) or Chapter X (Cross-Border Trade in Services)].⁴⁰ Accordingly, each Party retains the right to establish and apply its spectrum and frequency management policies that may limit the number of suppliers of public telecommunications transport services. Each Party also retains the right to allocate frequency bands taking into account present and future needs.
3. The current state of allocated frequency bands shall be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

Article X.8: Regulatory Authority

1. Each Party shall ensure that its regulatory authority is legally distinct and functionally independent from any supplier of telecommunications networks, services or equipment.
- 2bis. [EU: A party that retains ownership or control of providers of telecommunication transport networks and/or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control].
2. Each Party shall ensure that its regulatory authorities' decisions and procedures are impartial with respect to all market participants and are administered in a transparent and timely manner.
3. Each Party shall ensure that its regulatory authorities are sufficiently empowered to regulate the sector, including having the power to[:

⁴⁰ To be later specified, pending discussion on architecture of the agreement.

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- (a) require suppliers of public telecommunications transport networks or services submit any information the regulator considers necessary for the administration of its responsibilities; and
- (b) enforce their decisions relating to the obligations set out in articles X.2 and X.4 through appropriate sanctions. Such sanctions may include financial penalties, corrective orders or the suspension or revocation of licences.

Article X.9: Resolution of Telecommunication Disputes

Recourse to Regulatory Authorities

1. Further to Article X (Transparency - Administrative Proceedings) and Article X (Transparency – Review and Appeal), each Party shall ensure the following:
 - (a) [enterprises]CAN [of the other party]CAN have timely recourse to its regulatory authority to resolve disputes with suppliers of public telecommunications transport networks or services regarding the matters covered in Articles [X.2 and X.4 – access, competitive safeguards and interconnection] and that, under the domestic law of the Party, are within the regulatory authority's jurisdiction. This shall include, as appropriate, the issuance of a binding decision by the regulatory authority to resolve the dispute within a reasonable period of time.
 - (b) suppliers of public telecommunications transport networks or services [of the other Party]CAN requesting interconnection with a major supplier in the Party's territory have recourse to a regulatory authority to resolve disputes regarding the appropriate terms, conditions and rates for interconnection with such a major supplier within a reasonable and publicly specified period of time.

Appeal and Review

2. Each Party shall ensure that an [enterprise] whose interests are adversely affected by a determination or decision of a regulatory authority may obtain review of the determination or decision by an impartial and independent judicial, quasi-judicial or administrative authority, as provided in the domestic law of the Party. Written reasons for the determination or decision of the judicial, quasi-judicial or administrative authority shall be given. Each Party shall ensure that such determinations or decisions, subject to appeal or further review, are implemented by the regulatory authority.
3. An application for judicial review shall not constitute grounds for non-compliance with the determination or decision of the regulatory authority unless the relevant judicial authority stays such determination or decision.

Article X.10: Transparency

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1. Further to Articles X (Transparency - Publication) and X (Transparency - Notification and Provision of Information), and in addition to the other provisions in this Chapter relating to the publication of information, each Party shall make publicly available:
 - (i) the responsibilities of a regulatory authority in an easily accessible and clear form, in particular where those responsibilities are given to more than one body;
 - (ii) its measures relating to public telecommunications transport network or services, including:
 - (A) regulations of its regulatory authority, together with the basis for such regulations;
 - (B) measures relating to tariffs and other terms and conditions of service;
 - (C) measures relating to specifications of technical interfaces;
 - (D) measures relating to conditions for attaching terminal or other equipment to the public telecommunications transport network;
 - (E) measures relating to notification, permit, registration, or licensing requirements, if any; and
 - (ii) information on bodies responsible for preparing, amending and adopting standards-related measures.

Article X.11: Forbearance

The Parties recognize the importance of a competitive market to achieve legitimate public policy objectives for telecommunications services. To this end, and to the extent provided in its domestic law, each Party may refrain from applying a regulation to a telecommunications service when, following analysis of the market, it is determined that effective competition is achieved.

[Article X.12: Relation to Other Chapters]

In the event of any inconsistency between this Chapter and another Chapter in this Agreement, this Chapter shall prevail to the extent of the inconsistency.]CAN

ARTICLE X.13: NUMBER PORTABILITY

Each Party shall ensure that suppliers of public telecommunications transport services in its territory provide number portability on reasonable terms and conditions.

Article X.15: Definitions

For the purpose of this Chapter:

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cost-oriented means based on cost and may involve different cost methodologies for different facilities or services;

[**enterprise** means an “enterprise” as defined in Article X (Initial Provisions and General Definitions – Definitions of General Application) and includes a branch of an enterprise;]CAN

essential facilities means facilities of a public telecommunications transport network or service that:

- (a) are exclusively or predominantly provided by a single or a limited number of suppliers; and
- (b) cannot feasibly be economically or technically substituted in order to provide a service;

interconnection means linking suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

intra-corporate communications means telecommunications through which a company communicates within the company or with or among its subsidiaries, branches and, subject to a Party’s domestic laws and regulations, affiliates. For these purposes, “subsidiaries”, “branches” and, where applicable, “affiliates” are as defined by each Party. “Intra-corporate communications” excludes commercial or non-commercial services that are supplied to companies that are not related subsidiaries, branches or affiliates or that are offered to customers or potential customers;

leased circuits means telecommunications facilities between two or more designated points that are set aside for the dedicated use of or availability to a particular customer or other users of the customer’s choosing;

major supplier means a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications transport networks or services as a result of :

- (a) control over essential facilities; or
- (b) use of its position in the market;

network termination point means the physical point at which a user is provided with access to a public communications network.

public telecommunications transport network means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;

public telecommunications transport service means any telecommunications transport service required, explicitly or in effect, by a Party to be offered to the public generally

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regulatory authority means the body responsible for the regulation of telecommunications;

service supplier means a person of a Party that seeks to supply or supplies a service, including a supplier of telecommunications networks or services;

[supply of a service] means the provision of a service:

- (a) from the territory of a Party into the territory of the other Party;
- (b) in the territory of a Party by a person of that Party to a person of the other Party;
- (c) by a service supplier of a Party, through an enterprise in the territory of the other Party; or
- (d) by a national of a Party in the territory of the other Party;]CAN

telecommunications services means all services consisting of the transmission and reception of signals by any electro-magnetic means and do not cover the economic activity consisting of the provision of content by means of telecommunications;

user is an [enterprise] or natural person using or requesting a publicly available telecommunications service.

‘**number portability**’ means the ability of end-users of public telecommunications transport services to retain, at the same location, the same telephone numbers without impairment of quality, reliability or convenience when switching between [the same category of]EU [like]CAN suppliers of [like]EU public telecommunications transport services.

ELECTRONIC COMMERCE

Article X-01: Objective, Scope and Coverage

1. The Parties recognise that electronic commerce increases economic growth and trade opportunities in many sectors and confirm the applicability of WTO rules to electronic commerce. They agree to promote the development of electronic commerce between them, in particular by co-operating on the issues raised by electronic commerce under the provisions of this [Chapter/Sub-section].
2. The Parties confirm that this Agreement applies to electronic commerce. In the event of an inconsistency between this [Chapter/Sub-section] and another [Chapter/Sub-section] of this Agreement, the other [Chapter/Sub-section] shall prevail to the extent of the inconsistency.
3. Nothing in this [Chapter/Sub-section] imposes obligations on a Party to allow a delivery transmitted by electronic means except in accordance with the obligations of that Party under the other [Chapter/Sub-section] of this Agreement.

Article X-02: Customs Duties on Electronic Deliveries

1. The Parties agree that a delivery transmitted by electronic means shall not be subject to customs duties, fees or charges.
2. For greater clarity, paragraph 1 does not prevent a Party from imposing internal taxes or other internal charges on a delivery transmitted by electronic means, provided that such taxes or charges are imposed in a manner consistent with the other [Chapter/Sub-section] of this Agreement.

Article X-03: Trust and Confidence in Electronic Commerce

Each Party should adopt or maintain laws, regulations or administrative measures for the protection of personal information of users engaged in electronic commerce and, when doing so, shall take into due consideration international standards for data protection of relevant international organisations of which both Parties are a member.

Article X-04: General Provisions

Considering the potential of electronic commerce as a social and economic development tool, the Parties recognize the importance of:

- (a) clarity, transparency and predictability in their domestic regulatory frameworks in facilitating, to the maximum extent possible, the development of electronic commerce;
- (b) interoperability, innovation and competition in facilitating electronic commerce;

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- (c) facilitating the use of electronic commerce by small and medium sized enterprises.

Article X-05: Dialogue on E-Commerce

1. Recognising the global nature of electronic commerce, the Parties agree to maintain a dialogue on issues raised by electronic commerce, which will *inter alia* address:

- (a) the recognition of certificates of electronic signatures issued to the public and the facilitation of cross-border certification services,
- (b) the liability of intermediary service providers with respect to the transmission, or storage of information,
- (c) the treatment of unsolicited electronic commercial communications,
- (d) the protection of personal information and the protection of consumers and businesses from fraudulent and deceptive commercial practices in the sphere of electronic commerce.

2. The dialogue in Paragraph 1 may take the form of exchange of information on the Parties' respective laws, regulations, and other measures on these issues, as well as sharing experiences on the implementation of such laws, regulations, and other measures.

3. Recognizing the global nature of electronic commerce, the Parties affirm the importance of actively participating in multilateral fora to promote the development of electronic commerce.

Article X-06: Definitions

For purposes of this Chapter:

delivery means a computer program, text, video, image, sound recording or other delivery that is digitally encoded; and

electronic commerce means commerce conducted through telecommunications, alone or in conjunction with other information and communication technologies.

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**Chapter X
Government Procurement**

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Article I Definitions

For purposes of this Chapter:

- (a) **commercial goods or services** means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;
- (b) **Committee** means the Committee on Government Procurement established by Article XIX:1;
- (c) **construction service** means a service that has as its objective the realization by whatever means of civil or building works, based on Division 51 of the United Nations Provisional Central Product Classification (CPC);
- (d) **days** means calendar days;
- (e) **electronic auction** means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;
- (f) **in writing or written** means any worded or numbered expression that can be read, reproduced and later communicated. It may include electronically transmitted and stored information;
- (g) **limited tendering** means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;
- (h) **measure** means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;
- (i) **multi-use list** means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;
- (j) **notice of intended procurement** means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;
- (k) **offset** means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar action or requirement;
- (l) **open tendering** means a procurement method whereby all interested suppliers may submit a tender;
- (m) **person** means a natural person or a juridical person;
- (n) **procuring entity** means an entity covered under Annex X-01, X-02 or X-03;

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- (o) **qualified supplier** means a supplier that a procuring entity recognizes as having satisfied the conditions for participation;
- (p) **selective tendering** means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;
- (q) **services** includes construction services, unless otherwise specified;
- (r) **standard** means a document approved by a recognized body that provides for common and repeated use, rules, guidelines or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, service, process or production method;
- (s) **supplier** means a person or group of persons that provides or could provide goods or services; and
- (t) **technical specification** means a tendering requirement that:
 - (i) lays down the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or
 - (ii) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.

Article II Scope and Coverage

Application of Chapter

1. This Chapter applies to any measure regarding covered procurement, whether or not it is conducted exclusively or partially by electronic means.
2. For the purposes of this Chapter, covered procurement means procurement for governmental purposes:
 - (a) of goods, services, or any combination thereof:
 - (i) as specified in each Party's annexes to this Chapter; and
 - (ii) not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;
 - [NOTE: Canada has moved the additional language for 2(a)(ii) to be a note specific to Canada Lands Company in Annex 3]*
 - (b) by any contractual means, including: purchase; lease; and rental or hire purchase, with or without an option to buy;

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- (c) for which the value, as estimated in accordance with paragraphs 6 through 8, equals or exceeds the relevant threshold specified in a Party's annexes to this Chapter, at the time of publication of a notice in accordance with Article VI;
 - (d) by a procuring entity; and
 - (e) that is not otherwise excluded from coverage in paragraph 3 or a Party's annexes to this Chapter.
3. Except where provided otherwise in a Party's annexes to this Chapter, this Chapter does not apply to:
- (a) the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;
 - (b) non-contractual agreements or any form of assistance that a Party provides, including cooperative agreements, grants, loans, equity infusions, guarantees and fiscal incentives;
 - (c) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;
 - (d) public employment contracts;
 - (e) procurement conducted:
 - (i) for the specific purpose of providing international assistance, including development aid;
 - (ii) under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or
 - (iii) under the particular procedure or condition of an international organization, or funded by international grants, loans or other assistance where the applicable procedure or condition would be inconsistent with this Chapter.
4. The procurement subject to the rules of this chapter shall be all procurement covered by each Party's following Annexes and any note attached thereto:
- (a) in Annex X-01, the central government entities whose procurement is covered by this Chapter;
 - (b) in Annex X-02, the sub-central government entities whose procurement is covered by this Chapter;
 - (c) in Annex X-03, all other entities whose procurement is covered by this Chapter;

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- (d) in Annex X-04, the goods covered by this Chapter;
- (e) in Annex X-05, the services, other than construction services, covered by this Chapter;
- (f) in Annex X-06, the construction services covered by this Chapter; and
- (g) in Annex X-07, any General Notes.

5. Where a procuring entity, in the context of covered procurement, requires persons not covered under a Party's annexes to this Chapter to procure in accordance with particular requirements, Article IV shall apply *mutatis mutandis* to such requirements.

Valuation

6. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall:

- (a) neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Chapter; and
- (b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:
 - (i) premiums, fees, commissions and interest; and
 - (ii) where the procurement provides for the possibility of options, the total value of such options.

7. Where an individual requirement for a procurement results in the award of more than one contract, or in the award of contracts in separate parts (hereinafter referred to as "recurring contracts" the calculation of the estimated maximum total value shall be based on:

- (a) the value of recurring contracts of the same type of good or service awarded during the preceding 12 months or the procuring entity's preceding fiscal year, adjusted, where possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following 12 months; or
- (b) the estimated value of recurring contracts of the same type of good or service to be awarded during the 12 months following the initial contract award or the procuring entity's fiscal year.

8. In the case of procurement by lease, rental or hire purchase of goods or services, or procurement for which a total price is not specified, the basis for valuation shall be:

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- (a) in the case of a fixed-term contract:
 - (i) where the term of the contract is 12 months or less, the total estimated maximum value for its duration; or
 - (ii) where the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;
- (b) where the contract is for an indefinite period, the estimated monthly instalment multiplied by 48; and
- (c) where it is not certain whether the contract is to be a fixed-term contract, subparagraph (b) shall be used.

Article III Security and General Exceptions

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.

2. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on international trade, nothing in this Chapter shall be construed to prevent a Party from imposing or enforcing measures:

- (a) necessary to protect public morals, order or safety;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to protect intellectual property; or
- (d) relating to goods or services of persons with disabilities, philanthropic institutions or prison labour.

Article IV General Principles

Non-Discrimination

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the other Party and to the suppliers of the other Party offering such goods or services, treatment no less favourable than the treatment the Party, including its procuring entities, accords to goods, services and suppliers. For greater certainty, such treatment includes:

- (a) within Canada, treatment no less favourable than that accorded by a province or territory, including its procuring entities, to goods and services of, and to suppliers located in, that province or territory; and
- (b) within the European Union, treatment no less favourable than that accorded by a Member State or a sub-central region of a Member State, including its

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procuring entities, to goods and services of, and suppliers located in, that Member State or sub-central region, as the case may be.

2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

- (a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or
- (b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

Use of Electronic Means

3. When conducting covered procurement by electronic means, a procuring entity shall:

- (a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and
- (b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

Conduct of Procurement

4. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:

- (a) is consistent with this Chapter, using methods such as open tendering, selective tendering and limited tendering;
- (b) avoids conflicts of interest; and
- (c) prevents corrupt practices.

Rules of Origin

5. For purposes of covered procurement, a Party shall not apply rules of origin to goods or services imported from or supplied from the other Party that are different from the rules of origin the Party applies at the same time in the normal course of trade to imports or supplies of the same goods or services from the same Party.

Offsets

6. With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset.

Measures Not Specific to Procurement

7. Paragraphs 1 and 2 shall not apply to: customs duties and charges of any kind imposed on, or in connection with, importation; the method of levying such duties and charges; other import regulations or formalities and measures affecting trade in services other than measures governing covered procurement.

Article V Information on the Procurement System

1. Each Party shall:

- (a) promptly publish any law, regulation, judicial decision, administrative ruling of general application, standard contract clause mandated by law or regulation and incorporated by reference in notices or tender documentation and procedure regarding covered procurement, and any modifications thereof, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public; and
- (b) provide an explanation thereof to the other Party, on request.

2. Each Party shall list, in Annex X [CAN: *revised GPA text is "Information on the Procurement System"*]:

[Note: The nomenclature of annexes and (possibly) appendices will be discussed once a general decision on the structure of the CETA will have been agreed.]

- (a) the electronic or paper media in which the Party publishes the information described in paragraph 1;
- (b) the electronic or paper media in which the Party publishes the notices required by Articles VI, VIII:7 and XV:2; and
- (c) the website address or addresses where the Party publishes:
 - (i) its procurement statistics pursuant to Article XV:5; or
 - (ii) its notices concerning awarded contracts pursuant to Article XV:6.

3. Each Party shall promptly notify the Committee of any modification to the Party's information listed in Annex X [CAN: *revised GPA text is "Information on the Procurement System"*].

Article VI Notices

Notice of Intended Procurement

1. For each covered procurement, a procuring entity shall publish a notice of intended procurement, except in the circumstances described in Article XII.

All the notices of intended procurement shall be directly accessible [EU: by electronic means free of charge through a single point of access], [CAN: subject to paragraph 2.] In addition, the notices may

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also be published in an appropriate paper medium. Such medium shall be widely disseminated and such notices shall remain readily accessible to the public, at least until expiration of the time-period indicated in the notice.

The appropriate paper and electronic medium shall be listed by each Party in Annex X [CAN: *revised GPA text is "Information on the Procurement System"*].

2. A Party may apply a transitional period of up to 5 years from the date of entry into force of this Agreement to entities covered by Annex 2 and Annex 3 that are not ready to participate in a single point of access referred to in paragraph 1. Those entities shall, during such transitional period, provide their notices of intended procurement, [CAN: if accessible by electronic means,] through links in a gateway electronic site that is accessible free of charge and listed in Annex X.

3. Except as otherwise provided in this Chapter, each notice of intended procurement shall include:

- (a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;
- (b) a description of the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;
- (c) for recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended procurement;
- (d) a description of any options;
- (e) the time-frame for delivery of goods or services or the duration of the contract;
- (f) the procurement method that will be used and whether it will involve negotiation or electronic auction;
- (g) where applicable, the address and any final date for the submission of requests for participation in the procurement;
- (h) the address and the final date for the submission of tenders;
- (i) the language or languages in which tenders or requests for participation may be submitted, if they may be submitted in a language other than an official language of the Party of the procuring entity;
- (j) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless such requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement;

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- (k) where, pursuant to Article VIII, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender; and
- (l) an indication that the procurement is covered by this Chapter.

Summary Notice

4. For each case of intended procurement, a procuring entity shall publish a summary notice that is readily accessible, at the same time as the publication of the notice of intended procurement, in English or French. The summary notice shall contain at least the following information:

- (a) the subject-matter of the procurement;
- (b) the final date for the submission of tenders or, where applicable, any final date for the submission of requests for participation in the procurement or for inclusion on a multi-use list; and
- (c) the address from which documents relating to the procurement may be requested.

Notice of Planned Procurement

5. Procuring entities are encouraged to publish in the appropriate [CAN: revised *GPA text is*: paper or electronic] [EU: electronic, and, where available, paper] medium listed in Annex X [CAN: revised *GPA text is* "Information on the Procurement System"] as early as possible in each fiscal year a notice regarding their future procurement plans (hereinafter referred to as "notice of planned procurement"). [CAN: If a procuring entity decides to publish a notice of planned procurement, the] EU: The notice of planned procurement shall also be published in the single point of access site listed in Annex X-X, [CAN: subject to paragraph 2.] The notice of planned procurement should include the subject-matter of the procurement and the planned date of the publication of the notice of intended procurement.

6. A procuring entity covered under Annex X-02 or 3 may use a notice of planned procurement as a notice of intended procurement provided that the notice of planned procurement includes as much of the information referred to in paragraph 2 as is available to the entity and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

Article VII Conditions for Participation

1. A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement.
2. In establishing the conditions for participation, a procuring entity:
 - (a) shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a Party;

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(b) may require relevant prior experience where essential to meet the requirements of the procurement; and

(c) shall not require prior experience in the territory of the Party to be a condition of the procurement.

3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity:

(a) shall evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and

(b) shall base its evaluation on the conditions that the procuring entity has specified in advance in notices or tender documentation.

4. Where there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:

(a) bankruptcy;

(b) false declarations;

(c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;

(d) final judgments in respect of serious crimes or other serious offences;

(e) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier; or

(f) failure to pay taxes.

Article VIII Qualification of Suppliers

Registration Systems and Qualification Procedures

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.

2. Each Party shall ensure that:

(a) its procuring entities make efforts to minimize differences in their qualification procedures; and

(b) where its procuring entities maintain registration systems, the entities make efforts to minimize differences in their registration systems.

3. A Party, including its procuring entities, shall not adopt or apply any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement.

Selective Tendering

4. Where a procuring entity intends to use selective tendering, the entity shall:
- (a) include in the notice of intended procurement at least the information specified in Article VI:2(a), (b), (f), (g), (j), (k) and (l) and invite suppliers to submit a request for participation; and
 - (b) provide, by the commencement of the time-period for tendering, at least the information in Article VI:2 (c), (d), (e), (h) and (i) to the qualified suppliers that it notifies as specified in Article X:3(b).

5. A procuring entity shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.

6. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 4, a procuring entity shall ensure that those documents are made available at the same time to all the qualified suppliers selected in accordance with paragraph 5.

Multi-Use Lists

7. A procuring entity may maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is:

- (a) published annually; and
- (b) where published by electronic means, made available continuously,

in the appropriate medium listed in Annex X [CAN: *revised GPA text is "Information on the Procurement System"*].

8. The notice provided for in paragraph 7 shall include:
- (a) a description of the goods or services, or categories thereof, for which the list may be used;
 - (b) the conditions for participation to be satisfied by suppliers for inclusion on the list and the methods that the procuring entity will use to verify that a supplier satisfies the conditions;
 - (c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list;
 - (d) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list; and
 - (e) an indication that the list may be used for procurement covered by this Chapter.

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9. Notwithstanding paragraph 7, where a multi-use list will be valid for three years or less, a procuring entity may publish the notice referred to in paragraph 7 only once, at the beginning of the period of validity of the list, provided that the notice:

- (a) states the period of validity and that further notices will not be published; and
- (b) is published by electronic means and is made available continuously during the period of its validity.

10. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use list and shall include on the list all qualified suppliers within a reasonably short time.

11. Where a supplier that is not included on a multi-use list submits a request for participation in a procurement based on a multi-use list and all required documents, within the time-period provided for in Article X:2, a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement on the grounds that the entity has insufficient time to examine the request, unless, in exceptional cases, due to the complexity of the procurement, the entity is not able to complete the examination of the request within the time-period allowed for the submission of tenders.

Annex X-02 and Annex X-03 Entities

12. A procuring entity covered under Annex X-02 or X-03 may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:

- (a) the notice is published in accordance with paragraph 7 and includes the information required under paragraph 8, as much of the information required under Article VI:2 as is available and a statement that it constitutes a notice of intended procurement or that only the suppliers on the multi-use list will receive further notices of procurement covered by the multi-use list; and
- (b) the entity promptly provides to suppliers that have expressed an interest in a given procurement to the entity, sufficient information to permit them to assess their interest in the procurement, including all remaining information required in Article VI:2, to the extent such information is available.

13. A procuring entity covered under Annex X-02 or X-03 may allow a supplier that has applied for inclusion on a multi-use list in accordance with paragraph 10 to tender in a given procurement, where there is sufficient time for the procuring entity to examine whether the supplier satisfies the conditions for participation.

Information on Procuring Entity Decisions

14. A procuring entity shall promptly inform any supplier that submits a request for participation in a procurement or application for inclusion on a multi-use list of the procuring entity's decision with respect to the request or application.

15. Where a procuring entity rejects a supplier's request for participation in a procurement or application for inclusion on a multi-use list, ceases to recognize a supplier as qualified, or

removes a supplier from a multi-use list, the entity shall promptly inform the supplier and, on request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

Article IX Technical Specifications and Tender Documentation

Technical Specifications

1. A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to international trade.
2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:
 - (a) set out the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and
 - (b) base the technical specification on international standards, where such exist; otherwise, on national technical regulations, recognized national standards or building codes.
3. Where design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, where appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfil the requirements of the procurement by including words such as "or equivalent" in the tender documentation.
4. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, the entity includes words such as "or equivalent" in the tender documentation.
5. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.
6. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

Tender Documentation

7. A procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:
 - (a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings or instructional materials;

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- (b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection with the conditions for participation;
- (c) all evaluation criteria the entity will apply in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;
- (d) where the procuring entity will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the submission of information by electronic means;
- (e) where the procuring entity will hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria, on which the auction will be conducted;
- (f) where there will be a public opening of tenders, the date, time and place for the opening and, where appropriate, the persons authorized to be present;
- (g) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, such as whether on paper or by electronic means; and
- (h) any dates for the delivery of goods or the supply of services.

8. In establishing any date for the delivery of goods or the supply of services being procured, a procuring entity shall take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the point of supply or for supply of services.

9. The evaluation criteria set out in the notice of intended procurement or tender documentation may include, among others, price and other cost factors, quality, technical merit, environmental characteristics and terms of delivery.

10. A procuring entity shall promptly:

- (a) make available tender documentation to ensure that interested suppliers have sufficient time to submit responsive tenders;
- (b) provide, on request, the tender documentation to any interested supplier; and
- (c) reply to any reasonable request for relevant information by any interested or participating supplier, provided that such information does not give that supplier an advantage over other suppliers.

Modifications

11. Where, prior to the award of a contract, a procuring entity modifies the criteria or requirements set out in the notice of intended procurement or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications or amended or re-issued notice or tender documentation:

- (a) to all suppliers that are participating at the time of the modification, amendment or re-issuance, where such suppliers are known to the entity, and in all other cases, in the same manner as the original information was made available; and
- (b) in adequate time to allow such suppliers to modify and re-submit amended tenders, as appropriate.

Article X Time-Periods

General

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for suppliers to prepare and submit requests for participation and responsive tenders, taking into account such factors as:

- (a) the nature and complexity of the procurement;
- (b) the extent of subcontracting anticipated; and
- (c) the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points where electronic means are not used.

Such time-periods, including any extension of the time-periods, shall be the same for all interested or participating suppliers.

Deadlines

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of requests for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. Where a state of urgency duly substantiated by the procuring entity renders this time-period impracticable, the time-period may be reduced to not less than 10 days.

3. Except as provided for in paragraphs 4, 5, 7 and 8 a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:

- (a) in the case of open tendering, the notice of intended procurement is published; or
- (b) in the case of selective tendering, the entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

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4. A procuring entity may reduce the time-period for tendering established in accordance with paragraph 3 to not less than 10 days where:

- (a) the procuring entity has published a notice of planned procurement as described in Article VI:4 at least 40 days and not more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:
 - (i) a description of the procurement;
 - (ii) the approximate final dates for the submission of tenders or requests for participation;
 - (iii) a statement that interested suppliers should express their interest in the procurement to the procuring entity;
 - (iv) the address from which documents relating to the procurement may be obtained; and
 - (v) as much of the information that is required for the notice of intended procurement under Article VI:2, as is available;
- (b) the procuring entity, for contracts of a recurring nature, indicates in an initial notice of intended procurement that subsequent notices will provide time-periods for tendering based on this paragraph; or
- (c) a state of urgency duly substantiated by the procuring entity renders the time-period for tendering established in accordance with paragraph 3 impracticable.

5. A procuring entity may reduce the time-period for tendering established in accordance with paragraph 3 by five days for each one of the following circumstances:

- (a) the notice of intended procurement is published by electronic means;
- (b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and
- (c) the entity accepts tenders by electronic means.

6. The use of paragraph 5, in conjunction with paragraph 4, shall in no case result in the reduction of the time-period for tendering established in accordance with paragraph 3 to less than 10 days from the date on which the notice of intended procurement is published.

7. Notwithstanding any other provision in this Article, where a procuring entity purchases commercial goods or services, or any combination thereof, it may reduce the time-period for tendering established in accordance with paragraph 3 to not less than 13 days, provided that it publishes by electronic means, at the same time, both the notice of intended procurement and the tender documentation. In addition, where the entity accepts tenders for commercial goods or services by electronic means, it may reduce the time-period established in accordance with paragraph 3 to not less than 10 days.

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8. Where a procuring entity covered under Annex X-02 or X-03 has selected all or a limited number of qualified suppliers, the time-period for tendering may be fixed by mutual agreement between the procuring entity and the selected suppliers. In the absence of agreement, the period shall not be less than 10 days.

Article XI Negotiation

1. A Party may provide for its procuring entities to conduct negotiations:
 - (a) where the entity has indicated its intent to conduct negotiations in the notice of intended procurement required under Article VI:2; or
 - (b) where it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or tender documentation.
2. A procuring entity shall:
 - (a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and
 - (b) where negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

Article XII Limited Tendering

1. Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Articles VI through VIII, IX (paragraphs 7 through 11), X, XI, XIII and XIV only under any of the following circumstances:

- (a) where:
 - (i) no tenders were submitted or no suppliers requested participation;
 - (ii) no tenders that conform to the essential requirements of the tender documentation were submitted;
 - (iii) no suppliers satisfied the conditions for participation; or
 - (iv) the tenders submitted have been collusive,
provided that the requirements of the tender documentation are not substantially modified;
- (b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:
 - (i) the requirement is for a work of art;

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- (ii) the protection of patents, copyrights or other exclusive rights; or
- (iii) due to an absence of competition for technical reasons;
- (c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement where a change of supplier for such additional goods or services:
 - (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and
 - (ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;
- (d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;
- (e) for goods purchased on a commodity market;
- (f) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;
- (g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership or bankruptcy, but not for routine purchases from regular suppliers; or
- (h) where a contract is awarded to a winner of a design contest provided that:
 - (i) the contest has been organized in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a notice of intended procurement; and
 - (ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner.

2. A procuring entity shall prepare a report in writing on each contract awarded under paragraph 1. The report shall include the name of the procuring entity, the value and kind of goods or services procured and a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of limited tendering.

Article XIII Electronic Auctions

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall provide each participant, before commencing the electronic auction, with:

- (a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;
- (b) the results of any initial evaluation of the elements of its tender where the contract is to be awarded on the basis of the most advantageous tender; and
- (c) any other relevant information relating to the conduct of the auction.

Article XIV Treatment of Tenders and Awarding of Contracts

Treatment of Tenders

1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.
2. A procuring entity shall not penalize any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.
3. Where a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.

Awarding of Contracts

4. To be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation and be from a supplier that satisfies the conditions for participation.
5. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that the entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:
 - (a) the most advantageous tender; or
 - (b) where price is the sole criterion, the lowest price.
6. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.
7. A procuring entity shall not use options, cancel a procurement or modify awarded contracts in a manner that circumvents the obligations under this Chapter.

Article XV Transparency of Procurement Information

Information Provided to Suppliers

1. A procuring entity shall promptly inform participating suppliers of the entity's contract award decisions and, on the request of a supplier, shall do so in writing. Subject to paragraphs 2 and 3 of Article XVI, a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier's tender.

Publication of Award Information

2. Not later than 72 days after the award of each contract covered by this Chapter, a procuring entity shall publish a notice in the appropriate paper or electronic medium listed in Annex X [CAN: *revised GPA text is* "Information on the Procurement System"]. Where the entity publishes the notice only in an electronic medium, the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:

- (a) a description of the goods or services procured;
- (b) the name and address of the procuring entity;
- (c) the name and address of the successful supplier;
- (d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;
- (e) the date of award; and
- (f) the type of procurement method used, and in cases where limited tendering was used in accordance with Article XII, a description of the circumstances justifying the use of limited tendering.

Maintenance of Documentation, Reports and Electronic Traceability

3. Each procuring entity shall, for a period of at least three years from the date it awards a contract, maintain:

- (a) the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports required under Article XII; and
- (b) data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

Collection and Reporting of Statistics

4. Each Party shall collect and report to the Committee statistics on its contracts covered by this Chapter. Each report shall cover one year and be submitted within two years of the end of the reporting period, and shall contain:

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- (a) for Annex X-01 procuring entities:
 - (i) the number and total value, for all such entities, of all contracts covered by this Chapter;
 - (ii) the number and total value of all contracts covered by this Chapter awarded by each such entity, broken down by categories of goods and services according to an internationally recognized uniform classification system; and
 - (iii) the number and total value of all contracts covered by this Chapter awarded by each such entity under limited tendering;
- (b) for Annex X-02 and X-03 procuring entities, the number and total value of contracts covered by this Chapter awarded by all such entities, broken down by Annex; and
- (c) estimates for the data required under subparagraphs (a) and (b), with an explanation of the methodology used to develop the estimates, where it is not feasible to provide the data.

5. Where a Party publishes its statistics on an official website, in a manner that is consistent with the requirements of paragraph 4, the Party may, instead of reporting to the Committee, provide a link to the website, together with any instructions necessary to access and use such statistics.

6. Where a Party requires notices concerning awarded contracts, pursuant to paragraph 2, to be published electronically and where such notices are accessible to the public through a single database in a form permitting analysis of the covered contracts, the Party may, instead of reporting to the Committee, provide a link to the website, together with any instructions necessary to access and use such data.

Article XVI Disclosure of Information

Provision of Information to Parties

1. On request of the other Party, a Party shall provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender. In cases where release of the information would prejudice competition in future tenders, the Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the agreement of, the Party that provided the information.

Non-Disclosure of Information

2. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not provide to any particular supplier information that might prejudice fair competition between suppliers.

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3. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, authorities and review bodies, to disclose confidential information where disclosure:

- (a) would impede law enforcement;
- (b) might prejudice fair competition between suppliers;
- (c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or
- (d) would otherwise be contrary to the public interest.

Article XVII Domestic Review Procedures

1. Each Party shall provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure through which a supplier may challenge:

- (a) a breach of the Chapter; or

(b) where the supplier does not have a right to challenge directly a breach of the Chapter under the domestic law of a Party, a failure to comply with a Party's measures implementing this Chapter,

arising in the context of a covered procurement, in which the supplier has, or has had, an interest. The procedural rules for all challenges shall be in writing and made generally available.

2. In the event of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or has had, an interest, that there has been a breach or a failure as referred to in paragraph 1, the Party of the procuring entity conducting the procurement shall encourage the entity and the supplier to seek resolution of the complaint through consultations. The entity shall accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or its right to seek corrective measures under the administrative or judicial review procedure.

3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 10 days from the time when the basis of the challenge became known or reasonably should have become known to the supplier.

4. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by a supplier arising in the context of a covered procurement.

5. Where a body other than an authority referred to in paragraph 4 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.

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6. Each Party shall ensure that a review body that is not a court shall have its decision subject to judicial review or have procedures that provide that:

- (a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;
- (b) the participants to the proceedings (hereinafter referred to as "participants") shall have the right to be heard prior to a decision of the review body being made on the challenge;
- (c) the participants shall have the right to be represented and accompanied;
- (d) the participants shall have access to all proceedings;
- (e) the participants shall have the right to request that the proceedings take place in public and that witnesses may be presented; and
- (f) the review body shall make its decisions or recommendations in a timely fashion, in writing, and shall include an explanation of the basis for each decision or recommendation.

7. Each Party shall adopt or maintain procedures that provide for:

- (a) rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing; and
- (b) where a review body has determined that there has been a breach or a failure as referred to in paragraph 1, corrective action or compensation for the loss or damages suffered, which may be limited to either the costs for the preparation of the tender or the costs relating to the challenge, or both.

8. Not later than ten years after the entry into force of this agreement the parties will take up negotiations to further develop the quality of remedies, including a possible commitment to introduce or maintain pre-contractual remedies.

Article XVIII Modifications and Rectifications to Coverage

1. A Party may modify or rectify its Annexes to this Chapter.

Modifications

2. When a Party modifies an Annex to this Chapter, the Party shall:

- (a) notify the other Party in writing; and
- (b) include in the notification a proposal of appropriate compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification.

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3. Notwithstanding subparagraph 2(b), a Party need not provide compensatory adjustments if:

- (a) the modification in question is negligible in its effect; or
- (b) the modification covers an entity over which the Party has effectively eliminated its control or influence.

4. If the other Party disputes that:

- (a) an adjustment proposed under subparagraph 2(b) is adequate to maintain a comparable level of mutually agreed coverage;
- (b) the modification is negligible in its effect; or
- (c) the modification covers an entity over which the Party has effectively eliminated its control or influence under subparagraph 3(b),

it must object in writing within 45 days of receipt of the notification referred to in subparagraph 2(a) or be deemed to have accepted the adjustment or modification, including for the purposes of Chapter X (Dispute Settlement).

Rectifications

5. The following changes to a Party's Annexes shall be considered a rectification, provided that they do not affect the mutually agreed coverage provided for in the Agreement:

- (a) a change in the name of an entity;
- (b) a merger of two or more entities listed within an Annex; and
- (c) the separation of an entity listed in an Annex into two or more entities that are all added to the entities listed in the same Annex.

6. In the case of proposed rectifications to a Party's Annexes, the Party shall notify the other Party every two years, in line with the cycle of notifications provided for under the GPA, following the entry into force of the Agreement.

7. A Party may notify the other Party of an objection to a proposed rectification within 45 days from having received the notification. Where a Party submits an objection, it shall set out the reasons why it believes the proposed rectification is not a change provided for in paragraph 5 of this Article, and describe the effect of the proposed rectification on the mutually agreed coverage provided for in the Agreement. If no such objection is submitted in writing within 45 days after having received the notification, the Party shall be deemed to have agreed to the proposed rectification.

Article XIX Institutions

Committee on Government Procurement

LIMITE

1. There shall be a Committee on Government Procurement composed of representatives from each Party. The Committee shall meet as necessary for the purpose of affording Parties the opportunity to consult on any matters relating to the operation of this Chapter or the furtherance of its objectives, and to carry out such other responsibilities as may be assigned to it by the Parties.

2. The Committee shall meet, upon request of a Party, to:

- (a) consider issues regarding public procurement that are referred to it by a Party including emerging horizontal issues such as sustainability [and social] criteria in procurement policies, the electronic publication of procurement information, and the access to remedy procedures and pre-contractual remedies;

[Note: Negotiators agree that depending on the outcome of the discussions on a Forestry Annex, the issues listed above may be removed en block from this article.]

- (b) exchange information relating to the public procurement opportunities in each Party; and
- (c) discuss any other matters related to the operation of this Chapter.
- (d) consider the promotion of coordinated activities to facilitate access for suppliers to procurement opportunities in the territory of each Party. Such activities may include information sessions in particular with a view to improving electronic access to publicly-available information on each Party's procurement regime, and initiatives to facilitate access for small and medium-sized enterprises.

3. Each Party shall submit statistics relevant to the procurement covered by this Chapter, as established in Article XV, annually to the Committee.

I.

Intellectual Property Rights

CETA – DRAFT IPR CHAPTER

<p>Article 1 Objectives</p>
<p>The objectives of this chapter are to:</p> <ul style="list-style-type: none"> (a) facilitate the production and commercialization of innovative and creative products, and the provision of services, between the Parties; and (b) achieve an adequate and effective level of protection and enforcement of intellectual property rights.
<p>Article X Definitions</p>
<p>For the purposes of this Chapter, “pharmaceutical product” means a product including a chemical drug, biologic drug, vaccine or radiopharmaceutical, which is manufactured, sold or represented for use in:</p> <ul style="list-style-type: none"> (a) making a medical diagnosis, treating, mitigating or preventing disease, disorder, or abnormal physical state, or its symptoms, or (b) restoring, correcting or modifying physiological functions.
<p>Sub-Section 1 Principles</p>
<p>Article 2 Nature and Scope of Obligations</p>
<p>The provisions of this chapter complement the rights and obligations between the Parties under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter called TRIPS Agreement).</p> <p>Each Party shall be free to determine the appropriate method of implementing the provisions of this Agreement within its own legal system and practice.</p> <p>Nothing in this Agreement creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and enforcement of law in general.</p>
<p>Article 3 Public Health Concerns</p>
<ol style="list-style-type: none"> 1. The Parties recognise the importance of the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001 by the Ministerial Conference of the World Trade Organisation. In interpreting and implementing the rights and obligations under this Chapter, the Parties shall ensure consistency with this Declaration. 2. The Parties shall contribute to the implementation and respect the Decision of the WTO General

Council of 30 August 2003 on Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, as well as the Protocol amending the TRIPS Agreement, done at Geneva on 6 December 2005.

**[CA: Article 4
Exhaustion**

Nothing in this Chapter shall affect the freedom of the Parties to determine whether and under what conditions the exhaustion of intellectual property rights applies.]

Sub-Section 2
Standards Concerning Intellectual Property Rights

**Article 5
Copyright and Related Rights**

Article 5.1 – Protection Granted

1. The Parties shall comply with the Berne Convention for the Protection of Literary and Artistic Works (1886, last amended in 1979), the WIPO Copyright Treaty – WCT (Geneva, 1996), and the WIPO Performances and Phonograms Treaty – WPPT (Geneva, 1996). The Parties shall comply with Articles 1 through 22 of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961).

2. The moral rights of the authors [EU: and performers] [CA: for performances fixed in phonograms] shall be protected in accordance with Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works and Article 5 of the WIPO Performances and Phonograms Treaty (WPPT).

[EU: x.In this agreement, references to "performers" are without prejudice to international treaties and to national legislation on the definition of this term.]

3. The Parties shall confine limitations or exceptions to certain special cases which do not conflict with a normal exploitation of the subject matter and do not unreasonably prejudice the legitimate interests of the right holder.

4. Notwithstanding paragraph 3, with respect to related rights, the Parties may provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention.

Article 5.8 – Broadcasting and Communication to the Public

1. The Parties shall provide performers the exclusive right to authorize or prohibit the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.

2. The Parties shall ensure that a single equitable remuneration is paid by the user if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public, and to ensure that this remuneration is shared between the relevant performers and phonogram producers. The Parties may, in the absence of agreement between the performers and phonogram producers, lay down the conditions as to the sharing of this remuneration between them.

[CA: Article 5.13 - Protection of Technological Measures]

5.13(1) Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures⁴¹ that are used by authors, performers [CA: of performances fixed in phonograms,] or producers of phonograms in connection with the exercise of their rights in, and that restrict acts in respect of, their works, performances [CA: fixed in phonograms], and phonograms, which are not authorized by the authors, the performers [CA: of performances fixed in phonograms,] or the producers of phonograms concerned or permitted by law.

5.13(2) In order to provide the adequate legal protection and effective legal remedies referred to in paragraph 5.13(1), each Party shall provide protection at least against:

- (a) to the extent provided by its law:
 - (i) the unauthorized circumvention of an effective technological measure carried out knowingly or with reasonable grounds to know; and
 - (ii) the offering to the public by marketing of a device or product, including computer programs, or a service, as a means of circumventing an effective technological measure; and
- (b) the manufacture, importation, or distribution of a device or product, including computer programs, or provision of a service that:
 - (i) is primarily designed or produced for the purpose of circumventing an effective technological measure; or
 - (ii) has only a limited commercially significant purpose other than circumventing an effective technological measure.

5.13(3) In implementing paragraphs 5.13(1) and (2), no Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as the product does not otherwise contravene its measures implementing these paragraphs.

5.13(4) In providing adequate legal protection and effective legal remedies pursuant to the provisions of paragraph 5.13(1), a Party may adopt or maintain appropriate limitations or exceptions to measures implementing the provisions of paragraphs 5.13(1) and (2). The obligations set forth in paragraphs 5.13(1) and (2) are without prejudice to the rights, limitations, exceptions, or defences to copyright or related rights infringement under a Party's law.]

⁴¹ For the purposes of this Article, **technological measures** means any technology, device, or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works, [CA: performers'] performances [CA: fixed in phonograms], or phonograms, which are not authorized by authors, performers [CA: of performances fixed in phonograms,] or producers of phonograms, as provided for by a Party's law. Without prejudice to the scope of copyright or related rights contained in a Party's law, technological measures shall be deemed effective where the use of protected works, performances [CA: fixed in phonograms], or phonograms is controlled by authors, performers [CA: of performances fixed in phonograms,] or producers of phonograms through the application of a relevant access control or protection process, such as encryption or scrambling, or a copy control mechanism, which achieves the objective of protection.

[CA: Article 5.14 - Protection of Rights Management Information]

5.14(1) To protect electronic rights management information,⁴² each Party shall provide adequate legal protection and effective legal [CA: civil] remedies against any person knowingly performing without authority any of the following acts knowing, or [CA: with respect to civil remedies,] having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any copyright or related rights:

- (a) to remove or alter any electronic rights management information;
- (b) to distribute, import for distribution, broadcast, communicate, or make available to the public copies of works, [CA: performers'] performances [CA: fixed in phonograms], or phonograms, knowing that electronic rights management information has been removed or altered without authority.

5.14(2) In providing adequate legal protection and effective legal [CA: civil] remedies pursuant to the provisions of paragraph 5.14(1), a Party may adopt or maintain appropriate limitations or exceptions to measures implementing the provisions of paragraph 5.14(1). The obligations set forth in paragraph 5.14(1) are without prejudice to the rights, limitations, exceptions, or defences to copyright or related rights infringement under a Party's law.]

[CA: Article 5.16 - Liability of Intermediary Service Providers]

5.16(1) Each Party's enforcement procedures shall apply to infringement of copyright or related rights over digital networks, which may include the unlawful use of means of widespread distribution for infringing purposes. These procedures shall be implemented in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce, and, consistent with that Party's law, preserves fundamental principles such as freedom of expression, fair process, and privacy. [CA: For instance, without prejudice to a Party's law, adopting or maintaining a regime providing for limitations on the liability of, or on the remedies available against, online service providers, while preserving the legitimate interests of right holders, would be permitted].

5.16(2) Each Party shall endeavour to promote cooperative efforts within the business community to effectively address trademark and copyright or related rights infringement while preserving legitimate competition and, consistent with that Party's law, preserving fundamental principles such as freedom of expression, fair process, and privacy.

5.16(3) A Party may provide, in accordance with its laws and regulations, its competent authorities with the authority to order an online service provider to disclose expeditiously to a right holder information sufficient to identify a subscriber whose account was allegedly used for infringement, where that right

⁴² For the purposes of this Article, **rights management information** means:

- (a) information that identifies the work, the [CA: performer's] performance [CA: fixed in a phonogram], or the phonogram; the author of the work, the performer of the performance [CA: fixed in a phonogram], or the producer of the phonogram; or the owner of any right in the work, [CA: performer's] performance [CA: fixed in a phonogram], or phonogram;
 - (b) information about the terms and conditions of use of the work, [CA: performer's] performance [CA: fixed in a phonogram], or phonogram; or
 - (c) any numbers or codes that represent the information described in (a) and (b) above;
- when any of these items of information is attached to a copy of a work, [CA: performer's] performance [CA: fixed in a phonogram], or phonogram, or appears in connection with the communication or making available of a work, [CA: performer's] performance [CA: fixed in a phonogram], or phonogram to the public.

holder has filed a legally sufficient claim of trademark or copyright or related rights infringement, and where such information is being sought for the purpose of protecting or enforcing those rights.

These procedures shall be implemented in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce, and, consistent with that Party's law, preserves fundamental principles such as freedom of expression, fair process, and privacy.]

Article 6
Trademarks

Article 6.1 – International Agreements

The Parties shall make all reasonable efforts to comply with the Singapore Treaty on the Law of Trademarks (2006) and to accede to *the Protocol related to the Madrid Agreement concerning the International Registration of Marks*.

Article 6.2 – Registration Procedure

The Parties shall provide for a system for the registration of trademarks in which reasons for the refusal to register a trademark shall be communicated in writing to the applicant who will have the opportunity to contest such refusal and to appeal a final refusal to a judicial authority. The Parties shall provide for the possibility to file oppositions either against trademark applications or against trademark registrations. The Parties shall provide a publicly available electronic database of trademark applications and trademark registrations.

Article 6.3 – Exceptions to the Rights Conferred by a Trademark

The Parties shall provide for the fair use of descriptive terms, including terms descriptive of geographical origin, as a limited exception to the rights conferred by a trademark. In determining what is fair use, account shall be taken of the legitimate interests of the owner of the trademark and of third parties. The Parties may provide other limited exceptions, provided such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Article 8
Designs

Article 8.1 - International Agreements

The Parties shall make all reasonable efforts to accede to the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs (1999).

[EU: Article 8.2 - Relationship to Copyright]

The subject matter of a design right may be protected under copyright law if the conditions for such protection are met. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Party.]

Article 9
Patents

Article 9.1 - International Agreements

The Parties shall make all reasonable efforts to comply with the Patent Law Treaty (Geneva, 2000).

[EU: Article 9.2 – Patent term restoration

1. The Parties recognise that pharmaceutical and plant protection products protected by a patent on their respective territory may be subject to an administrative authorisation procedure before being put on their market. They recognise that the period that elapses between the filing of the application for a patent and the first authorisation to place the product on their respective market, as defined for that purpose by the relevant legislation, may shorten the period of effective protection under the patent.

2. The Parties shall provide for a further period of protection for a pharmaceutical or plant protection product which is protected by a patent and which has been subject to an administrative authorisation procedure, that period being equal to the period referred to in paragraph 1 second sentence above, reduced by five years.

3. Notwithstanding paragraph 2, the duration of the further period of protection may not exceed five years.

4. A pharmaceutical product for which paediatric studies have been carried out may be entitled to a six months extension of the period mentioned in paragraphs 2 and 3.]

[CA: Article 9.3 - Public Disclosure

Each Party shall provide a 12-month grace period for patent applications without any formal requirements such as a declaration of disclosures made.]

Article 10

Protection of undisclosed Data relating to Pharmaceutical Products

[EU: Pharmaceutical product” means a product containing an entity, including a chemical drug, biologic drug, vaccine or radiopharmaceutical, which is manufactured, sold or represented for use in

(a) making a medical diagnosis, treating, mitigating or preventing disease, disorder, or abnormal physical state, or its symptoms, or

(b) restoring, correcting or modifying physiological functions.]

1. The Parties shall guarantee the confidentiality, non-disclosure and non-reliance of data submitted for the purpose of obtaining an authorisation to put a pharmaceutical product on the market.

[EU: 2.For that purpose, the Parties shall ensure in their respective legislation that any information submitted to obtain an authorisation to put a pharmaceutical product on the market will remain undisclosed to third parties and benefit from protection against unfair commercial use.

(a) During a period of at least eight years, starting from the date of grant of marketing approval in the Party concerned, no person or entity (public or private), other than the person or entity who submitted such undisclosed data, will, without the explicit consent of the person or entity who submitted this data, rely directly or indirectly on such data in support of an application for the authorisation to put a pharmaceutical product on the market;

(b) during a ten-year period, starting from the date of grant of marketing approval in the Party concerned, a marketing authorization granted for a subsequent application will not permit placing a pharmaceutical product on the market, unless the subsequent applicant submitted his/her own data (or data used with authorization of the right holder) meeting the same requirements as the first applicant.

<p>Products registered without submission of such data would be removed from the market until the requirements were met.]</p> <p>[EU: 3. In addition, the ten-year period referred to shall be extended to a maximum of eleven years if, during the first eight years after obtaining the authorisation in either of the Parties, the holder of the basic authorisation obtains an authorisation for one or more new therapeutic indications which are considered of significant clinical benefit in comparison with existing therapies.]</p> <p>[CA: 3. The Parties recognize the value of providing added incentives for development of paediatric applications. To this end, the Parties may provide added patent protection or data protection for such applications.]</p>
<p>[EU: Article 10 bis Patent linkage mechanisms]</p>
<p>[EU: If a Party relies on "patent linkage" mechanisms whereby the granting of marketing authorizations (or notices of compliance or similar concepts) for generic pharmaceutical products is linked to the existence of patent protection, it shall ensure that the patent holders and the manufacturers of generic medicines are treated in a fair and equitable way, including regarding their respective rights of appeal.]</p>
<p>[CA: Article X-1 Trade Secrets</p>
<p>1. Each Party shall provide the legal means for any person to prevent trade secrets from being disclosed to, acquired by, or used by others without the consent of the person lawfully in control of the information in a manner contrary to honest commercial practices, in so far as:</p> <ul style="list-style-type: none"> (a) the information is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons that normally deal with the kind of information in question; (b) the information has actual or potential commercial value because it is secret; and (c) the person lawfully in control of the information has taken reasonable steps under the circumstances to keep it secret. <p>2. A Party may require that to qualify for protection a trade secret must be evidenced in documents, electronic or magnetic means, optical discs, microfilms, films or other similar instruments.</p> <p>3. No Party may limit the duration of protection for trade secrets, so long as the conditions in paragraph 1 exist.</p> <p>4. No Party may discourage or impede the voluntary licensing of trade secrets by imposing excessive or discriminatory conditions on such licenses or conditions that dilute the value of the trade secrets.]</p>
<p>[CA: Article X-2 Data protection</p>
<p>1. If a Party requires, as a condition for approving the marketing of pharmaceutical products that utilize new chemical entities, the submission of undisclosed test or other data necessary to determine whether the use of such products is safe and effective, the Party shall protect against disclosure of the</p>

data of persons making such submissions, where the origination of such data involves considerable effort, [EU: with a possible exception] [CA: except] where the disclosure is necessary to protect the public or unless steps are taken to ensure that the data is protected against unfair commercial use.

2. Each Party shall provide that for data subject to paragraph 1 that are submitted to the Party after the date of entry into force of this Agreement, no person other than the person that submitted them may, without the latter's permission, rely on such data in support of an application for product approval during a period of not less than five years from the date on which the Party granted approval to the person that produced the data for approval to market its product, taking account of the nature of the data and the person's efforts and expenditures in producing them. Subject to this provision, there shall be no limitation on any Party to implement abbreviated approval procedures for such products on the basis of bioequivalence and bioavailability studies.

3. Where a Party relies on a marketing approval granted by another Party, the reasonable period of exclusive use of the data submitted in connection with obtaining the approval relied on shall begin with the date of the first marketing approval relied on.]

Article 11 Data Protection on Plant Protection Products

1. The Parties shall determine safety and efficacy requirements before authorising the placing on the market of plant protection products.

2. The Parties shall recognise a temporary right to the owner of a test or study report submitted for the first time to achieve a marketing authorisation for a plant protection product.

During such period, the test or study report will not be used for the benefit of any other person aiming to achieve a marketing authorisation for plant protection product, except when the explicit consent of the first owner is proved. This right will be hereinafter referred as data protection.

[EU: 3. The test or study report should fulfil the following conditions:

- (a) be necessary for the authorisation or for an amendment of an authorisation in order to allow the use on other crops, and
- (b) be compliant with the principles of good laboratory practice or of good experimental practice.]

[CA: 3. The test or study report should be necessary for the authorisation or for an amendment of an authorisation in order to allow the use on other crops.]

4. The period of data protection shall be at least ten years starting at the date of the first authorisation in that Party with respect to data supporting the authorisation of a new active ingredient and data supporting the concurrent registration of the end-use product containing the active ingredient. The duration of protection may be extended in order to encourage the authorisation of low-risk plant protection products and minor uses.

5. The Parties may also establish data protection requirements or financial compensation requirements for data supporting the amendment or renewal of an authorisation.

6. Each of the Parties [CA: may] [EU: shall] establish rules to avoid duplicative testing on vertebrate animals. Any applicant intending to perform tests and studies involving vertebrate animals should be encouraged to take the necessary measures to verify that those tests and studies have not already been performed or initiated.

7. The new applicant and the holder or holders of the relevant authorisations [EU: shall] [CA:

should] be encouraged to make every effort to ensure that they share tests and studies involving vertebrate animals. The costs of sharing the test and study reports shall be determined in a fair, transparent and non-discriminatory way. The prospective applicant is only required to share in the costs of information he is required to submit to meet the authorisation requirements.

8. The holder or holders of the relevant authorisation shall have a claim on the prospective applicant for a fair share of the costs incurred by him. The Party may direct the parties involved to resolve the matter by formal and binding arbitration administered under national law.

[CA: Article 11:

1. Each Party shall determine safety and efficacy requirements in respect of plant protection products on the basis of tests or study reports before authorizing the placing on the market of plant protection products for the first time, for renewal of such an authorization, or for an amendment.

2. Each Party shall provide a period of exclusive use protection for test data or data in a study report that supports the first authorization in that Party of a new active ingredient and data supporting the concurrent authorization of end-use products containing that active ingredient. The period of such protection shall be at least ten years starting with the date of that authorization and may be subject to extension in order to encourage the authorization of low-risk plant protection products and minor uses. During the period of protection the data shall not be used for the benefit of any other person applying to obtain a marketing authorization for a plant protection product or for the renewal or amendment of such an authorization, except when the explicit consent of the owner is proved.

3. Each Party may also establish data protection requirements or financial compensation requirements for data supporting an authorization or the renewal or amendment of an authorization when the data is provided in circumstances in which it does not qualify for exclusive use protection.

4. Each Party shall encourage the holders of existing authorizations that are subject to protection in accordance with paragraph 2 or 3 to make every effort to share test data and data in study reports involving vertebrate animals, with prospective applicants for authorizations or renewal or amendment of authorizations, in order to avoid duplicative testing.

5. Where a prospective applicant for authorization or renewal or amendment of an authorization is required by the data protection requirements to compensate the data owner for the right to use data, the Party shall ensure that the amount of such compensation is determined in a fair, transparent and non-discriminatory way, and that the prospective applicants are only required to compensate the owners for the use of data that they are required to submit to meet the Party's authorization requirements.

6. Each Party shall ensure that the owners of test data or data in study reports will have a claim on a prospective applicant with whom they shared data during the relevant protection period for a fair share of the cost incurred by the owner in relation to such data. Each Party may direct such private parties to resolve the matter of compensation by a formal and binding arbitration administered under national law.]

Article 12
Plant Varieties

The Parties shall co-operate to promote and reinforce the protection of plant varieties based on the International Convention for the Protection of New Varieties of Plants (UPOV).

<p>Sub-Section 3</p> <p>Enforcement of Intellectual Property Rights</p>
<p>Article 13</p> <p>General Obligations</p>
<p>1. The Parties shall ensure that any procedures for the enforcement of intellectual property rights are fair and equitable, and are not unnecessarily complicated or costly, nor entail unreasonable time-limits or unwarranted delays. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.</p> <p>2. In implementing the provisions of this Sub-Section, each Party shall take into account the need for proportionality between the seriousness of the infringement, the interests of third parties, and the applicable measures, remedies and penalties.</p> <p>3. Articles 14 to 23 relate to civil enforcement.</p> <p>4. For the purposes of Articles 14 to 23, unless otherwise mentioned, "intellectual property rights" means all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the Agreement on Trade-Related Aspects of Intellectual Property Rights.</p>
<p>Article 14</p> <p>Entitled Applicants</p>
<p>The Parties shall recognise as persons entitled to seek application of the procedures and remedies referred to in Articles 15 to 23:</p> <p>(a) the holders of intellectual property rights in accordance with the provisions of the applicable domestic law,</p> <p>(b) all other persons authorised to use those rights, if such persons are entitled to seek relief in accordance with the provisions of the applicable domestic law,</p> <p>(c) intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, if such bodies are entitled to seek relief in accordance with the provisions of the applicable domestic law,</p> <p>(d) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights, if such bodies are entitled to seek relief in accordance with the provisions of the applicable domestic law.</p>
<p>Article 15</p> <p>Evidence</p>
<p>Each Party shall ensure that, in the case of an alleged infringement of an intellectual property right committed on a commercial scale, the judicial authorities shall have the authority to order, where appropriate and following an application, the production of relevant information, as provided for in the Party's domestic law, including banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.</p>
<p>Article 16</p> <p>Measures for Preserving Evidence</p>
<p>1. The Parties shall ensure that, even before the commencement of proceedings on the merits of the</p>

case, the judicial authorities may, on application by an entity who has presented reasonably available evidence to support its claims that its intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information.

2. Each Party may provide that such measures include the detailed description, with or without the taking of samples, or the physical seizure of the alleged infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto. The judicial authorities shall have the authority to take those measures, if necessary without the other party being heard, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed.

Article 17
Right of Information

Without prejudice to its law governing privilege, the protection of confidentiality of information sources or the processing of personal data, each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority, upon a justified request of the right holder, to order the infringer or the alleged infringer, to provide to the right holder or to the judicial authorities, at least for the purpose of collecting evidence, relevant information as provided for in its applicable laws and regulations that the infringer or alleged infringer possesses or controls. Such information may include information regarding any person involved in any aspect of the infringement or alleged infringement and regarding the means of production or the channels of distribution of the infringing or allegedly infringing goods or services, including the identification of third persons alleged to be involved in the production and distribution of such goods or services and of their channels of distribution.

Article 18
Provisional and Precautionary Measures

1. Each Party shall provide that its judicial authorities shall have the authority to order prompt and effective provisional and precautionary measures, including an interlocutory injunction, against a party, or where appropriate, against a third party over whom the relevant judicial authority exercises jurisdiction, to prevent an infringement of an intellectual property right from occurring, and in particular, to prevent infringing goods from entering the channels of commerce.

2. Each Party shall provide that its judicial authorities have the authority to order the seizure or other taking into custody of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.

3. Each Party shall provide that, in the case of an alleged infringement of an intellectual property right committed on a commercial scale, the judicial authorities may order, in accordance with domestic law, the precautionary seizure of property of the alleged infringer, including the blocking of its bank accounts and other assets. To that end, the judicial authorities may order the communication of relevant bank, financial or commercial documents, or access to other relevant information, as appropriate.

Article 19
Other remedies

1. The Parties shall ensure that the judicial authorities may order, at the request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the definitive removal from the channels of commerce, or the destruction,

<p>of goods that they have found to be infringing an intellectual property right. The Parties shall ensure that the judicial authorities may order, if appropriate, destruction of materials and implements predominantly used in the creation or manufacture of those goods. In considering a request for such remedies, the need for proportionality between the seriousness of the infringement and the remedies ordered, as well as the interests of third parties, shall be taken into account.</p> <p>2. The Parties shall ensure that the judicial authorities have the authority to order that those remedies shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.</p>
<p style="text-align: center;">Article 20 Injunctions</p>
<p>1. Each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority to issue an order against a party to desist from an infringement, and <i>inter alia</i>, an order to that party, or, where appropriate, to a third party over whom the relevant judicial authority exercises jurisdiction, to prevent infringing goods from entering into the channels of commerce.</p> <p>2. Notwithstanding the other provisions of this Section, a Party may limit the remedies available against use by government, or by third parties authorized by government, without the use of authorization of the right holders to the payment of remuneration provided that the Party complies with the provisions of Part II of the TRIPS Agreement specifically addressing such use. In other cases, the remedies under this Section shall apply or, where these remedies are inconsistent with a Party's law, declaratory judgments and adequate compensation shall be available.</p>
<p style="text-align: center;">Article 21 Damages</p>
<p>1. Each Party shall provide that:</p> <p>(a) in civil judicial proceedings, its judicial authorities shall have the authority to order the infringer who knowingly or with reasonable grounds to know, engaged in infringing activity of intellectual property rights to pay the right holder:</p> <ul style="list-style-type: none"> (i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement; or (ii) the profits of the infringer that are attributable to the infringement, which may be presumed to be the amount of damages referred to in paragraph (i); <p>(b) in determining the amount of damages for infringements of intellectual property rights, its judicial authorities may consider, <i>inter alia</i>, any legitimate measure of value that may be submitted by the right holder, including lost profits.</p> <p>[CA: 2. For greater certainty, a Party may limit or exclude damages in certain special cases.]</p> <p>[EU: 2. These provisions are without prejudice to a Party's legislation providing for limitations of damages in certain exceptional situations, provided that they preserve the legitimate interests of the right holders.]</p>
<p style="text-align: center;">Article 22 Legal Costs</p>

Each Party shall provide that its judicial authorities, where appropriate, shall have the authority to order, at the conclusion of civil judicial proceedings concerning the enforcement of intellectual property rights, that the prevailing party be awarded payment by the losing party of legal costs and other expenses, as provided for under that Party's law.

Article 23
Presumption of Authorship or Ownership

For the purposes of civil proceedings involving copyright or related rights,

- (a) for the author of a literary or artistic work, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient for his/her name to appear on the work in the usual manner. Proof to the contrary may include registration;
- (b) the provisions under (a) shall apply mutatis mutandis to the holders of rights related to copyright with regard to their protected subject matter.

[EU: Article 24
Criminal enforcement^{43 44}

ARTICLE 24.1: CRIMINAL OFFENCES

Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright or related rights piracy on a commercial scale.⁴⁵

Such wilful trademark counterfeiting includes cases where distributors or retailers selling counterfeit products openly indicate that they are counterfeit.

For the purposes of this Article, acts carried out on a commercial scale include at least those carried out as commercial activities for direct or indirect economic or commercial advantage.

2. Each Party shall provide for criminal procedures and penalties to be applied in cases of wilful importation⁴⁶ and domestic use, in the course of trade and on a commercial scale, of labels or

⁴³ The issue of the scope is still under examination by the Member States of the European Union.

⁴⁴ “*counterfeit trademark goods*” means any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country in which the procedures set forth in Sub-Section 3 (Enforcement of Intellectual Property Rights) are invoked; “*pirated copyright goods*” means any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country in which the procedures set forth in Sub-Section 3 (Enforcement of Intellectual Property Rights) are invoked.

⁴⁵ Each Party shall treat wilful importation or exportation of counterfeit trademark goods or pirated copyright goods on a commercial scale as unlawful activities subject to criminal penalties under this Article. A Party may comply with its obligation relating to importation and exportation of counterfeit trademark goods or pirated copyright goods by providing for distribution, sale or offer for sale of such goods on a commercial scale as unlawful activities subject to criminal penalties.

packaging⁴⁷:

- (a) to which a mark has been applied without authorization which is identical to or cannot be distinguished from a trademark registered in its territory; and
- (b) which are intended to be used in the course of trade on goods or in relation to services which are identical to goods or services for which such trademark is registered.

[CA: Article 24.1.X – Camcording]

Each Party shall provide for criminal procedures and penalties to be applied in accordance with its laws and regulations against any person who, without authorization of the theatre manager or the holder of copyright in a cinematographic work, makes a copy of that work or any part thereof, from a performance of the work in a motion picture exhibition facility open to the public.]

3. With respect to the offences specified in this Article for which a Party provides criminal procedures and penalties, that Party shall ensure that criminal liability for aiding and abetting is available under its law.

4. Each Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability, which may be criminal, of legal persons for the offences specified in this Article for which the Party provides criminal procedures and penalties. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the criminal offences.

ARTICLE 24.2: PENALTIES

For offences specified in paragraphs 1, 2 [CA: insertion of camcording paragraph number from above TBD] and 3 of Article 24.1 (Criminal Offences), each Party shall provide penalties that include imprisonment as well as monetary fines⁴⁸ sufficiently high to provide a deterrent to future acts of infringement, consistently with the level of penalties applied for crimes of a corresponding gravity.

ARTICLE 24.3: SEIZURE, FORFEITURE AND DESTRUCTION

1. With respect to the offences specified in paragraphs 1, 2 and 3 of Article 24.1 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party shall provide that its competent authorities have the authority to order the seizure of suspected counterfeit trademark goods or pirated copyright goods, any related materials and implements used in the commission of the alleged offence, documentary evidence relevant to the alleged offence, and the assets derived from, or obtained directly or indirectly through the alleged infringing activity.

2. Where a Party requires the identification of items subject to seizure as a prerequisite for issuing an order referred to in paragraph 1, that Party shall not require the items to be described in greater detail than necessary to identify them for the purpose of seizure.

3. With respect to the offences specified in paragraphs 1, 2 and 3 of Article 24.1 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party shall provide that its competent authorities have the authority to order the forfeiture or destruction of all counterfeit trademark goods or pirated copyright goods. In cases where counterfeit trademark goods and pirated copyright goods are not destroyed, the competent authorities shall ensure that, except in exceptional circumstances, such goods

⁴⁶ A Party may comply with its obligation relating to importation of labels or packaging through its measures concerning distribution.

⁴⁷ A Party may comply with its obligations under this paragraph by providing for criminal procedures and penalties to be applied to attempts to commit a trademark offence.

⁴⁸ It is understood that there is no obligation for a Party to provide for the possibility of imprisonment and monetary fines to be imposed in parallel.

shall be disposed of outside the channels of commerce in such a manner as to avoid causing any harm to the right holder. Each Party shall ensure that the forfeiture or destruction of such goods shall occur without compensation of any sort to the infringer.

4. With respect to the offences specified in paragraphs 1, 2 and 3 of Article 24.1 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party shall provide that its competent authorities have the authority to order the forfeiture or destruction of materials and implements predominantly used in the creation of counterfeit trademark goods or pirated copyright goods and, at least for serious offences, of the assets derived from, or obtained directly or indirectly, through the infringing activity. Each Party shall ensure that the forfeiture or destruction of such materials, implements, or assets shall occur without compensation of any sort to the infringer.

5. With respect to the offences specified in paragraphs 1, 2 and 3 of Article 24.1 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party may provide that its judicial authorities have the authority to order:

- a) the seizure of assets the value of which corresponds to that of the assets derived from, or obtained directly or indirectly through the allegedly infringing activity; and
- b) the forfeiture of assets the value of which corresponds to that of the assets derived from, or obtained directly or indirectly through the infringing activity.

ARTICLE 24.4: EX OFFICIO CRIMINAL ENFORCEMENT

Each Party shall provide that, in appropriate cases, its competent authorities may act upon their own initiative to initiate investigation or legal action with respect to the criminal offences specified in paragraphs 1, 2 and 3 of Article 24.1 (Criminal Offences) for which a Party provides criminal procedures and penalties.]

Article 25 Border Measures [CA:⁴⁹]

[CA: suggest deleting 25.1]

[EU: Article 25.1 – Provision of Information from the Right Holder]

Each Party shall permit its competent authorities to request a right holder to supply information that may reasonably be expected to be within the right holder's knowledge to assist the competent authorities in taking the border measures referred to in this Article. Each Party also allow a right holder to supply such information to its competent authorities.]

Article 25.2 – Scope of Border Measures

1. Each Party shall adopt or maintain procedures with respect to import [EU: and export] shipments under which a right holder may request its competent authorities to suspend the release of, or detain goods suspected of infringing an IPR [CA: For the purposes of this Article, goods infringing an intellectual property right shall at least include goods that are subject to footnote 14 of Article 51 of the Agreement on Trade-Related Aspects of Intellectual Property Rights.] [EU: notably in respect of:

⁴⁹ [CA (footnote 5 of ACTA): It is understood that there shall be no obligation to apply the procedures set forth in this Section to goods put on the market in another country by or with the consent of the right holder.]

- (a) trademark;
- (b) copyright;
- (c) geographical indication; and
- (d) design.]

[EU: 2. Each party may enable such procedures to be made in respect of goods which involve infringements of other intellectual property rights.]

3. Each Party shall adopt or maintain procedures with respect to import [EU: and export] shipments under which its competent authorities may act upon their own initiative to suspend the release of, or to detain goods suspected of infringing an IPR [EU: notably in respect of those listed in paragraph 1.]

[EU: 4. For the purposes of this provision:

(a) "Import shipments" means shipments of goods brought into the territory of the parties from a place outside that territory, excluding goods that have been cleared for home consumption;

(b) "Export shipments" means shipments of goods which are to be taken from the territory of the parties to a place outside that territory.]

[CA: 4. Each Party may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.]

Article 25.3 – Application by the Right Holder

1. Each Party shall provide that its competent authorities require a right holder that requests the procedures described in Article 25.2 to provide adequate evidence to satisfy the competent authorities that, under the law of the Party providing the procedures, there is prima facie an infringement of the right holder's intellectual property right, and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspect goods reasonably recognisable by the competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to the procedures described in Article 25.2.

2. Each Party shall provide for applications to suspend the release of, or to detain goods suspected of infringing an IPR listed Article 25.2, [EU: under customs control in its territory][CA: to suggest alternate wording]. The competent authorities may provide for such applications to apply to multiple shipments. Each Party may provide that, at the request of the right holder, the application to suspend the release of, or to detain suspect goods may apply to selected points of entry and exit under customs control.

3. Each Party shall ensure that its competent authorities inform the applicant within a reasonable period whether they have accepted the application. Where its competent authorities have accepted the application, they shall also inform the applicant of the period of validity of the application.

4. A Party may provide that, where the applicant has abused the procedures described in Article 25.2, or where there is due cause, its competent authorities have the authority to deny, suspend, or void an application.

Article 25.4 – Security or Equivalent Assurance

Each Party shall provide that its competent authorities have the authority to require a right holder that

requests the procedures described in Article 25.2 to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that such security or equivalent assurance shall not unreasonably deter recourse to these procedures. [CA: A Party may provide that such security may be in the form of a bond conditioned to hold the defendant harmless from any loss or damage resulting from any suspension of the release of, or detention of, the goods in the event the competent authorities determine that the goods are not infringing. A Party may, only in exceptional circumstances or pursuant to a judicial order, permit the defendant to obtain possession of suspect goods by posting a bond or other security.]

Article 25.5 – Determination as to Infringement

Each Party shall adopt or maintain procedures by which its competent authorities may determine, within a reasonable period after the initiation of the procedures described in Article 25.2, whether the suspect goods infringe an intellectual property right.

Article 25.6 – Remedies

1. Each Party shall provide that its competent authorities have the authority to order the destruction of goods following a determination referred to in Article 25.5 that the goods are infringing. In cases where such goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, such goods are disposed of outside the channels of commerce in such a manner as to avoid any harm to the right holder.
2. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.
3. Each Party may provide that its competent authorities have the authority to impose administrative penalties following a determination referred to in Article 25.5 that the goods are infringing.

Sub-Section 4

[EU: Article 26 Co-operation

1. The Parties agree to co-operate with a view to supporting implementation of the commitments and obligations undertaken under this chapter. Areas of co-operation include, but are not limited to, the following activities:
 - (a) exchange of information on the legal framework concerning intellectual property rights (including geographical indications) and relevant rules of protection and enforcement; exchange of experiences on legislative progress;
 - (b) exchange of experiences on enforcement of intellectual property rights, including by customs, police, administrative and judiciary bodies;
 - (c) capacity-building.
2. Without prejudice and as a complement to paragraph 1, the European Union and Canada agree to establish and maintain an effective dialogue on intellectual property issues ("*IP Dialogue*") to address topics relevant to the protection and enforcement of intellectual property rights covered by this Chapter, and any other relevant issue.]

J.

Chapter X – Monopolies and State Enterprises

Principles (to be inserted in the Initial Provisions and Definitions Chapter of the Agreement):

Unless otherwise specified in this Agreement, a delegated person of a government of or in a Party is subject to the obligations in this Agreement, and each Party shall ensure that a delegated person of a government of or in a Party complies with those obligations.

Delegated person means a person in the exercise of regulatory, administrative or other governmental authority that a government of or in a Party has delegated to that person, such as the power to grant licenses, approve commercial transactions, or impose quotas, fees or other charges.

[EU proposal - we propose to combine the two: When person or entity exercises regulatory, administrative or other governmental authority that a government *[definition to be decided: of or in a Party]* has delegated to that person or entity, such as the power to grant licenses, approve commercial transactions, or impose quotas, fees or other charges, such person or entity shall be subject to the obligations of this Agreement and each Party shall ensure that person or entity complies with those obligations.]

[EU comment: EU agrees to the general principle, provided that sub-national entities are covered.]

Disciplines:

1. Each party shall ensure that an existing and future designated monopoly supplier of a good or service in its territory or a state enterprise that a government [EU comment: *definition to be decided: of or in a Party*] maintains and establishes:

a) accords non-discriminatory treatment in the purchase or sale involving either imports or exports of a good or the provision or receipt of a service to or from *[definition to be coordinated with discussion in the Investment Chapter: an investment of an investor to the other Party]* or to or from a good or service provider of the other Party in the Party's territory. [EU comment: EU would like to reserve its position on the scope of non-discrimination until internal consultations are finalised]

b) except to comply with any term of its designation consistent with paragraphs 1(a) and 2 of this section, acts solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale, in purchases or sales involving either imports or exports, and shall afford the enterprises of the other Party adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases or sales.

2. Each Party shall ensure that a monopoly supplier of a good or service does not use its monopoly position to engage directly or indirectly, including through its dealings with its parent, its subsidiaries or other enterprise with common ownership, in anticompetitive practices in a non-monopolized market in its territory.

LIMITE

3. A Party shall not prevent a person (whether or not an enterprise described in this section) under its jurisdiction from acting in accordance with the principles of paragraphs 1 and 2 of this section.

4. Paragraphs 1 and 2 do not apply to procurement for governmental purposes of goods, services, or any combination thereof not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale.

5. Paragraphs 1 also applies to a supplier of a good or service if:

(a) a government of or in a Party, formally or in effect,

(i) authorises or establishes a small number of service or goods suppliers, and

(ii) substantially prevents competition among those suppliers in its territory; and

(b) the supplier is one of the small number of suppliers referred to in paragraph (a)(i).

Definitions:

In accordance with commercial considerations means consistent with customary business practices of privately-held enterprises in the relevant business or industry [EU comment: we agree to this definition]

Non-discriminatory treatment means the better of national treatment and most-favoured-nation treatment as set out in [Articles XXXX]. [EU comment: it appears that we do not have in this Agreement any Article about MFN]

Monopoly means an entity, including a consortium or government agency, that in a relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant.

State enterprise means owned, or controlled through ownership interests, by a Party [EU question: can Canada confirm that this definition also covers Crown Corporations?]

COMPETITION

ARTICLE VII. ARTICLE X-01: COMPETITION POLICY

1. The Parties recognize the importance of free and undistorted competition in their trade relations. The Parties acknowledge that anti-competitive business conduct has the potential to distort the proper functioning of markets and undermine the benefits of trade liberalization.

2. Each Party shall take appropriate measures to proscribe anti-competitive business conduct, recognizing that such measures will enhance the fulfilment of the objectives of this Agreement.

3. The Parties shall cooperate on matters relating to proscribing anti-competitive business conduct in the free trade area in accordance with the *Agreement between the European Communities and the Government of Canada Regarding the Application of their Competition Laws*, entered into force on 17 June 1999, or any successor *Agreement*.

4. The measures referred to in paragraph 2 shall be consistent with the principles of transparency, non-discrimination and procedural fairness. Exclusions from the application of competition law shall be transparent. Each Party shall make available to the other Party public information concerning such exclusions provided under its competition laws.

5. In this Article, “anti-competitive business conduct” means anti-competitive agreements, concerted practices or arrangements by competitors; anti-competitive practices by an enterprise that is dominant in a market; and mergers with substantial anti-competitive effects.

[EU: Article X-02 Public enterprises, monopolies and enterprises entrusted with special or exclusive rights

Each Party shall ensure that public enterprises, monopolies and enterprises entrusted with special or exclusive rights are subject to their respective competition laws referred to above. The parties may not apply these laws in so far as their application obstructs the performance, in law or in fact, of the particular tasks assigned to the enterprises in question.]

Article X-03: Dispute Settlement

1. Neither Party may have recourse to state-to-state, investor-state, or any other dispute settlement procedure under this Agreement for any matter arising under this chapter.

K..

CHAPTER X+1: TRADE AND LABOUR

Article 1: [CA Objectives] [EU Right to regulate and levels of protection]

[CA - Canada's counter-proposal to EU proposal for Art 2(1) is to move it to this renamed Art 1: The Parties recognise the value of international co-operation and agreements on employment and labour affairs as a response of the international community to economic, employment and social challenges and opportunities resulting from globalisation. They recognize the contribution that international trade could make to full and productive employment and decent work for all and commit to consulting and co-operating as appropriate on trade-related labour and employment issues of mutual interest.

2. The Parties recognise the beneficial role that decent work, encompassing core labour standards, and high levels of labour protection, coupled with effective enforcement, can have on economic efficiency, innovation and productivity, including export performance, and they highlight the value of greater policy coherence in those areas. In this context, the Parties recognize the importance of social dialogue on labour matters among workers and employers, and their respective organizations, and governments, and commit to promotion of such dialogue in their territories.

3. Recognising the right of each Party to set its labour priorities, to establish its levels of labour protection compatible with its international commitments, including those in this Chapter, and to adopt or modify its relevant laws and policies, each Party shall strive to continue to improve those laws and policies with the goal of providing high levels of labour protection.⁵⁰

⁵⁰ Negotiators' Note: Subject to verification of coherence with Environment Chapter.

Article 2: [CA: Obligations based on Multilateral labour standards]
[EU: Multilateral labour standards and agreements]

1. Each Party shall ensure that its labour law and practices embody and provide protection for the fundamental principles and rights at work, and reaffirm its commitment to respecting, promoting and realising such principles and rights [more broadly] in accordance with its obligations as member of the ILO and its commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998.

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.

[CA

- (e) the prevention of occupational injuries and illnesses and compensation in cases of such injuries or illnesses;⁵¹
- (f) acceptable minimum employment standards for wage earners, including those not covered by collective agreements; and,
- (g) non-discrimination in respect of working conditions for migrant workers.]

CA: Any Canadian agreement on paragraphs 2, 3 and 4 of Article 2 is premised on a model that includes monetary assessments or other effective enforcement mechanism.

2. [EU: Accordingly,] Each Party [EU: shall ratify, to the extent that it has not yet done so, and] shall effectively implement in its laws and practices, in its whole territory, the Fundamental ILO Conventions:

- Convention 87 concerning Freedom of Association and Protection of the Right to Organise,
- Convention 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively;
- Convention 29 concerning Forced or Compulsory Labour,
- Convention 105 concerning the Abolition of Forced Labour,
- Convention 138 concerning Minimum Age for Admission to Employment,
- Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,
- Convention 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value,

⁵¹ **NEGOTIATORS' NOTE (12-04-2011):** Once there is agreement on para. 3 regarding occupational health and safety, this paragraph (e) can be withdrawn.

LIMITE

- Convention 111 concerning Discrimination in Respect of Employment and Occupation.

[CA compromise proposal: Each Party shall effectively implement the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), including to formulate a national policy which promotes basic principles such as aiming to prevent accidents and injury arising out of or in the course of work, and the development of a national preventative safety and health culture where the principle of prevention is accorded the highest priority.]

[EU compromise in response to CAN proposal: Each Party shall ensure that its labour law and practices embody and provide protection for the right to working conditions that respect the health and safety of workers. In this context, each Party shall, when preparing and implementing measures aimed at health protection and safety at work, take account of relevant scientific and technical information and related international standards, guidelines or recommendations if they exist, particularly if such measures may affect trade or investment between the Parties. Where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing protective measures]⁵²

3. **[EU:** The Parties reaffirm their commitments to effectively implementing the ILO Conventions that they have ratified.] The Parties will **[EU: regularly]** exchange information on their respective situation and advancements as regards the ratification of **[CA: fundamental and]** priority ILO conventions as well as other conventions that are classified as up-to-date by the ILO.
4. **[CA:** For the purpose of this Article, a Party is considered to effectively implement a convention through laws, regulations, collective agreements or other practices or implementing measures that bring it into substantial conformity with the object and purpose of the convention and its provisions.]

Article 3: Upholding levels of protection

- (C) The Parties recognise that it is inappropriate to encourage trade or investment by lowering the levels of protection embodied in domestic labour law and standards.
- (D) A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its labour law, as an encouragement for trade or the establishment, acquisition, expansion or retention of an investment or an investor in its territory.
- (E) A Party shall not fail to effectively enforce its labour law, through a sustained or recurring course of action or inaction, as an encouragement for trade or investment.

Article 4: Enforcement procedures, Administrative proceedings and review of administrative action⁵³

⁵² **NEGOTIATORS' NOTE (02-02-2012):** Agreed to await final text on Environment Chapter and adapt as necessary to the labour context.

⁵³ **EU Note 2011-04-12:** Need to ensure coherence with Environment Chapter.

[CA:

1. Each Party shall promote compliance with and effectively enforce its labour law by taking appropriate and timely government action, including
 - A. by establishing a regime that has proactive inspection elements and gives due consideration, in accordance with its law, to requests by persons with a legally recognized interest⁵⁴ for an investigation of an alleged infringement of the Party's labour law, and
 - B. by initiating proceedings to seek appropriate sanctions or remedies for such infringements[.]

Comment [AM2]: Canada proposes change to be consistent with agreed- to text.

Comment [AM3]: Canada proposes change to be consistent with agreed- to text.

Comment [AM4]: Canada proposes change to be consistent with agreed- to text.

[EU 1.] In connection with the obligations in article 3, e]

[CA: 2. E] Each Party shall ensure that administrative and judicial proceedings are available to persons with a legally recognized interest in a particular matter under its domestic law, in order to permit effective action against infringements of its labour law, including appropriate remedies for violations of such laws.

[EU 2.] [CA: 3.] Each Party shall, within the framework of its legal system, ensure that the proceedings referred to in **[EU paragraph 1]** **[CA: subparagraph 1 (b) and paragraph 2]** are not unnecessarily complicated or prohibitively costly, do not entail unreasonable time limits or unwarranted delays, provide injunctive relief, where appropriate, and are fair and equitable, including by:

- a. providing defendants with reasonable notice when a procedure is initiated, including a description of the nature of the proceeding and the basis of the claims;
- b. affording the parties to the procedures a reasonable opportunity to support or defend their respective positions, including by presenting information or evidence, prior to any final decision;
- c. providing that final decisions are made in writing and give reasons as appropriate to the case; and
- d. allowing the parties to an administrative proceeding an opportunity for review of final administrative decisions within a reasonable time by a tribunal established by law, with appropriate guarantees of independence and impartiality of decision-makers.⁵⁵

Section 7.01 ARTICLE 5: [PUBLIC INFORMATION AND AWARENESS]

1. Each Party, as well as complying with Art X.01 of Transparency Chapter, shall encourage public debate with and among non-State actors as regards the development and definition of policies that may lead to the adoption by public authorities of labour law and standards.

⁵⁴ **CA:** Need to ensure that the term “persons” includes unions, or modify the phrase so that they are included.

⁵⁵ **NEGOTIATORS’ NOTE (02-02-2012);** Agreed that this paragraph be revised to reflect certain minor changes agreed in the Environment Chapter; for example: “procedure” to “proceeding”. Revisions made.

LIMITE

2. Each Party shall promote public awareness of its labour law and standards, as well as enforcement and compliance procedures, including by ensuring the availability of information and by taking steps to further the knowledge and understanding of workers, employers and their representatives.

[CA Proposes move 5(2) to Sustainable Development provisions, with language like that proposed by EU April 9 but broaden coverage to that being developed by Canada.]

[EU Article 5: Trade favouring labour development and protection

2. In order to enhance the mutual supportiveness of their trade, investment and labour objectives, the Parties agree to encourage voluntary best practices and initiatives, including codes of conduct, social labelling and certification schemes operating under criteria of transparency and social partners' involvement, and comprising appropriate mechanisms for evaluation and verification of their implementation, and to promote and facilitate international stakeholder initiatives for the convergence of such instruments.]

[CA CA proposes that EU Art 6 be replaced by new provision in Article 2 regarding occupational health and safety.]

[EU Article 6: Scientific and technical information⁵⁶

Each Party shall, when preparing and implementing measures aimed at health protection and safety at work which may affect trade between the Parties or foreign direct investment, take account of relevant scientific and technical information and related international standards, guidelines or recommendations if they exist, and of the precautionary principle. Where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing protective measures.]⁵⁷

Article 7: Cooperative activities

1. The Parties commit to cooperate for the promotion of the objectives of this Chapter through actions such as:

- exchange of information on best practices on issues of common interest and on relevant events, activities, and initiatives organized in their respective territories;
- cooperation in international fora dealing with issues relevant for trade and labour and employment, including in particular the WTO and the ILO;

⁵⁶ **NEGOTIATORS' NOTE (12-04-2011):** Once there is agreement on para. 3 regarding occupational health and safety, this article can be withdrawn.

⁵⁷ **NEGOTIATORS' NOTE (02-02-2012):** Agreed to await final text on Environment Chapter and adapt as necessary to the labour context.

LIMITE

- the international promotion of Fundamental Rights at Work and their effective application, and the ILO Decent Work Agenda;
- dialogue and information sharing on the labour provisions in the context of their respective trade agreements, and their implementation;
- exploring collaboration in initiatives vis-a-vis third countries;
- other forms of cooperation as the Parties may deem appropriate.

2. In identifying areas for cooperation, and in carrying out cooperative activities, the Parties will consider any views provided by their worker and employer representatives and civil society.

3. The Parties may establish cooperative arrangements with the International Labour Organization and other competent international and regional organisations to draw on their expertise and resources to achieve the objectives of this Chapter.

Article 8: Institutional mechanisms ⁶

3. Each Party shall designate one office which shall serve as a Point of Contact with the other Party for the purposes of implementing this Chapter, including with regard to:
 - (a) cooperative programs and activities in accordance with Article 7;
 - (b) the receipt of submissions and communications under Article 9; and
 - (c) information to be provided to the other Party, the review panels and the public.

2. The Parties hereby establish a **[NAME TO BE DETERMINED]** to discuss matters of common interest, to oversee the implementation of this Chapter and review progress under it, including its operation and effectiveness, or to address any other matter within the scope of this Chapter as they jointly decide. The **[NAME]** shall be comprised of high level representatives of the Parties responsible for matters covered by this Chapter. Unless the Parties otherwise jointly decide, there shall be a meeting within one year, and thereafter as often as the Parties consider necessary, and each meeting shall include a session with the public to discuss matters relating to the implementation of this Chapter.

3. Each Party shall consult a domestic labour or sustainable development advisory group(s), or establish new ones when they do not exist, to provide views and advice on issues relating to this Chapter. Such groups may submit opinions and make recommendations on any matter related to this Chapter on their own initiative. The domestic advisory group(s) comprise(s) independent representative organisations of civil society in a balanced representation of employers, unions, labour and business organisations, as well as other relevant stakeholders as appropriate.

⁶ **EU NEGOTIATOR'S NOTE** Without prejudice to horizontal discussions on the institutional mechanisms and structures under CETA.

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4 The Parties shall take into account the activities of the International Labour Organisation so as to promote greater cooperation and coherence between the work of the Parties and that Organisation

Article 9: TITLE TO BE DETERMINED

The NAME shall promote transparency and public participation. To this end:

- (a) all decisions and reports that the NAME may adopt shall be made public, unless the NAME decides otherwise;
- (b) the NAME shall present updates on matters related to this Chapter, including its implementation, to the Civil Society Forum referred to in [Article]. Any views or opinions of the Civil Society Forum may be submitted directly to the Parties, or through the domestic advisory group(s). The NAME shall report annually on the follow-up given to such communications;
- (c) each Party shall be open to receive and shall give due consideration to submissions from the public on matters related to this Chapter, including communications on implementation concerns; each Party shall inform its domestic advisory group(s) of such communications; the NAME shall report annually on matters it may address pursuant to such communications.

ARTICLE 11: Government Consultations

- 7. [EU: For any matter arising under this Chapter, the Parties shall only have recourse to the procedures provided for in this Article and in Article 12].
- 8.
- 9. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the contact point of the other Party. The request shall present the matter clearly, identifying the questions at issue and providing a brief summary of any claims under this Chapter. Consultations shall commence promptly after a Party delivers a request for consultations.
- 10. During consultations, each Party shall provide the other with sufficient information in its possession to allow a full examination of the matters raised, [subject to any domestic legislation regarding confidential personal and commercial information]⁵⁸.
- 11. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.
- 12. Where relevant, subject to the agreement of both consulting Parties, they shall seek the information or views of any person, organisation or body that may contribute to the examination of the matter at issue, including the International Labour Organisation.

⁵⁸ Negotiators' Note: To be consistent with approach and terminology in dispute settlement chapter.

13. If a Party considers that the matter needs further discussion, that Party may request that [NAME] be convened to consider the matter by delivering a written request to the contact point of the other Party. The [NAME] shall convene promptly and endeavour to agree on a resolution of the matter. Where appropriate, it shall seek the advice of the Parties' domestic advisory group(s).
14. Any solutions or decisions on matters discussed under this Article shall be made publicly available.

Article 12: Panel of Experts⁵⁹

1. Unless the Parties agree otherwise, the provisions in Section 3, Sub-Section 1 [Dispute Settlement Procedures] of Chapter 14 [Dispute Settlement], as well as the Rules of Procedure in Annex X and the Code of Conduct in Annex Y, shall apply, except as otherwise provided in this Article [including the annexes if there are any].⁶⁰
4. A Party may, 90 days after the delivery of a request for consultations under Article 9.1, request that a Panel of Experts be convened to examine a matter that has not been satisfactorily addressed through government consultations. **[CA provided that the Party considers that the matter is trade-related and that the other Party has failed to comply with its obligations:**
 - a) **under paragraph 1 of Article 2, to the extent that they pertain to the ILO 1998 Declaration; or**
 - b) **under paragraphs 2 or 3 of Article 3; or,**
 - c) **under Article 4, to the extent that they are a sustained or recurring course of action or inaction.]**
3. **[CA Unless the Parties otherwise decide, a panel comprised of three independent experts, including a chairperson who is not a national of either Party, shall be established in a manner consistent with the criteria and procedures set out in Annex 1].**
3. [EU The [Joint Body] shall, at its first meeting after the entry into force of this Agreement, establish a list of at least 15 persons who are willing and able to serve as experts in Panel procedures. Each Party shall propose five individuals to serve as experts. The Parties shall also select five individuals who are not nationals of either Party and who shall act as chairperson to the Panel of experts. The [Joint Body] will ensure that the list is always maintained at this level.
4. The experts proposed as panellists shall comprise individuals with specialised knowledge or expertise in labour law, other issues addressed in this Chapter, or the resolution of disputes arising under international agreements. They shall be

⁵⁹ **NEGOTIATORS' NOTE (02-02-2012):** Agreed to await final text on Environment Chapter and adapt as necessary to the labour context.

⁶⁰ Negotiators note: cross references to be checked.

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independent, serve in their individual capacities and not take instructions from any organisation or government with regard to issues related to the matter at stake, or be affiliated with the government of any Party, and shall comply with [the Code of Good Conduct].

[EU: 5. For matters arising under this Chapter, the Panel of Experts shall be composed of experts from the list referred to in paragraph 3, in accordance with the relevant provisions of Section 3, Sub-Section 1 [Dispute Settlement Procedures] of Chapter 14 [Dispute Settlement].

6. [EU In matters related to the respect of multilateral agreements as set out in Article 2, the Panel should seek advice from the International Labour Organisation, and it shall rely on any pertinent available interpretative guidance, findings or decisions adopted in those bodies.]

[CA: 5. The panel:

- a. shall determine, within 30 days of confirmation of its terms of reference, whether the matter is trade-related and shall cease its functions if it determines that the matter is not trade-related; and]
 - b. may request and receive written submissions or any other information from organisations, institutions, and persons with relevant information or specialised knowledge, including in matters concerning the international conventions and agreements referred to in Article 2, from the relevant international organisations and bodies. The arbitration panel shall submit to the Parties for their comments any written submissions or any other information it obtains under this rule.
7. The Panel of Experts shall issue to the Parties an interim and a final report setting out the findings of facts, its determinations as to whether the responding Party has conformed with its obligations [CA: as set out in paragraph 2] [EU: under this chapter] and the rationale behind any findings, determinations and recommendations that it makes. Each Party shall make the final report publicly available within 30 days of its issuance.
8. If in the final report the Panel determines that there has been non-conformity, the Parties shall engage in discussions and shall endeavour, taking into account the Panel's report, to identify appropriate measures or, where appropriate, to decide upon a mutually satisfactory action plan. The Party concerned shall inform its advisory groups and the other Party of its decisions on any actions or measures to be implemented, no later than three months after the public release of the Panel's report. The follow-up to the report and the recommendations of the Panel of Experts shall be monitored by the NAME. The advisory bodies and the Civil Society Forum may submit observations to the NAME in this regard.⁶¹

⁶¹ [EU note: the EU approach is that a Party's decision not to follow or to depart from the Panel's report and recommendations shall not trigger the imposition of any economic penalties by the other Party.]

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9. [CA: Following the expiry of the period set out in paragraph 8, if the Parties were unable to agree on an action plan or the Party subject to review is failing to implement the action plan according to its terms, the requesting Party may request in writing that the panel be reconvened with a view to determining whether or not a monetary assessment needs to be set and paid in accordance with Annex 2.]

See footnote⁶²

⁶² **NEGOTIATORS' NOTE:** Art 17 (Protection of Information) – Deleted on condition that addressed elsewhere in CETA, to be verified.

1. *A Party that receives information identified by the other Party as confidential personal or proprietary information shall protect such information as confidential or proprietary.*
2. *A review panel that receives **confidential personal** or proprietary information under this Chapter shall treat it in accordance with the Model Rules of Procedure.*

[CA

ANNEX 1: PROCEDURES RELATED TO PANELS ⁶³

1. For purposes of selecting a review panel, the following procedures shall apply:

(a) within 20 days of the receipt of the request for the establishment of a panel, each Party shall select one panelist;

(b) if one Party fails to select its panelist within such period, the other Party shall select the panelist from among qualified individuals who are nationals of the Party that has failed to select its panelist;

(c) the following procedures shall apply to the selection of the chairperson:

(i) the Party that is the object of the review shall provide the Party that made the request with the names of three individuals who it considers to be qualified to be the chairperson. The names shall be provided no later than 20 days after the receipt of the request for the establishment of the panel;

(ii) the Party that made the request may choose one of the individuals to be the chairperson or, if the names were not provided or none of the individuals is acceptable, provide the Party that is the object of the review with the names of three individuals who it considers to be qualified to be the chairperson. Those names shall be provided no later than five days after receiving the names under subparagraph (i) or 25 days after the receipt of the request for the establishment of the panel;

(iii) the Party that is the object of the review may choose one of the three individuals to be the chairperson, no later than five days after receiving the names under subparagraph (ii), in default of which the Parties shall immediately request the Director General of the International Labour Office to appoint a chairperson within 25 days.

2. Canada shall, no later than the date on which a panel is convened pursuant to Article 13 -, notify the EU in writing of whether any monetary assessment imposed by a panel under Annex 2 with respect to Canada shall be addressed to Her Majesty in right of Canada or Her Majesty in right of the province concerned.

3. Panelists may furnish separate opinions on matters that are not the subject of unanimous agreement. A Panel however may not disclose which panelists are associated with majority or minority opinions.

ANNEX 2

MONETARY ASSESSMENTS

⁶³ **NEGOTIATORS' NOTE:** Agreed to await final text on Environment Chapter and adapt as necessary to the labour context.

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1. The panel shall reconvene as soon as possible after delivery of the request pursuant to paragraph 7 of Article 13. Within 90 days after being reconvened, the panel shall determine whether the terms of the action plan have been implemented or the non-compliance otherwise remedied.
2. In the event of a negative determination under paragraph 1 above, the panel shall assess a monetary assessment which reflects a determination of the estimated costs of implementing the action plan, or in the absence of an action plan, other appropriate measures to remedy the non-compliance provided that:
 - (a) the panel may adjust the assessment to reflect:
 - i. any mitigating factors, such as good faith efforts made by the Party to begin remedying such non-compliance after the final report of the panel, bona fide reasons for the Party's failure to comply with such obligations or a real likelihood that the cost of the assessment would have a negative impact on vulnerable members of society;
 - ii. any aggravating factors, such as the pervasiveness and duration of the Party's failure to comply with its obligations; or
 - iii. the Party's national conditions, circumstances and needs; and
 - (b) in no circumstances shall the assessment exceed \$15 million U.S. dollars annually, or its equivalent in the currency of the Party complained against, adjusted to the rate of inflation of that Party.
3. Unless the Council otherwise decides, monetary assessments shall be paid to the complaining Party. Where the circumstances warrant, the Council may decide that an assessment shall be paid into an interest-bearing fund designated by the Council and shall be expended at the direction of the Council to implement the action plan or other appropriate measures.
4. Ninety days from the date on which the panel determines the amount of the monetary assessment under paragraph 2, or at any time thereafter, the requesting Party may provide notice in writing to the other Party demanding payment of the monetary assessment. The monetary assessment shall be paid in equal, quarterly instalments beginning 120 days after the requesting Party provides such notice and ending upon agreement of the Parties or upon the date of any panel determination under paragraph 5.
5. If the Party that was the object of the review considers that it has eliminated the non-compliance, it may refer the matter to the panel by providing written notice to the other Party. The panel shall be reconvened within 60 days of such notice and issue its report within 90 days thereafter.
6. In Canada, the procedures for enforcement of the monetary assessment shall be the following:
 - (a) the EU may file in a court of competent jurisdiction a certified copy of a panel determination under paragraph 2 above only if Canada has failed to comply with the terms of a notice provided under paragraph 4 within 180 days of it being made;

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(b) when filed, the panel determination, for purposes of enforcement, shall become an order of the court;

(c) the EU may take proceedings for enforcement of a panel determination that is made an order of the court, in that court, against the person in Canada against whom the panel determination is addressed in accordance with paragraph 2 of Annex 1;

(d) proceedings to enforce a panel determination that has been made an order of the court shall be conducted in Canada by way of summary proceedings, provided that the court shall promptly refer any question of fact or any question of interpretation of the panel determination to the panel that made the determination, and the decision of the panel shall be binding on the court;

(e) a panel determination that has been made an order of the court shall not be subject to domestic review or appeal; and

(f) an order made by the court in proceedings to enforce a panel determination that has been made an order of the court shall not be subject to review or appeal.

7. In the EU, the procedures for enforcement of the monetary assessment shall be the following. If the EU has failed to comply with a notice provided under paragraph 4 above within 180 days of it being made, the panel determination in the EU shall be executed:

(a) subject to subparagraph (b), Canada may file in a court of competent jurisdiction a certified copy of a panel determination;

(b) Canada may file in court a panel determination that is a panel determination described in paragraph 1(a) only if the Party complained against has failed to comply with the determination within 180 days of when the determination was made;

(c) the court of competent jurisdiction is the (EU to confirm);

(d) Canada shall certify that the panel determination is final and not subject to appeal;

(e) the (court of competent jurisdiction -- EU to confirm) shall issue a resolution ordering the enforcement of the panel determination within 10 days of when the petition was filed;

(f) the resolution of the (court of competent jurisdiction -- EU to confirm) shall be addressed to the competent administrative authority for its prompt compliance.

8. Any change by the Parties to the procedures adopted and maintained by each of them pursuant to this Article that has the effect of undermining the provisions of this Article shall be considered a breach of compliance.

ENVIRONMENT

[CAN: Article X.1 Context and Objectives

1. The Parties recognize that the environment is a fundamental pillar of sustainable development and enhanced cooperation between the Parties to protect and conserve the environment brings benefits which will promote sustainable development, strengthen the environmental governance of the Parties, build on international environmental agreements to which they are party and complement the objectives of the CETA.]

[Note: EU accepts general approach and will provide alternative text proposal making a reference to trade.]

Article X.2: Definitions

For the purposes of this Chapter:

“environmental law”⁶⁴ means laws or statutory or regulatory provisions, or other legally binding measures, the purpose of which is the protection of the environment, including the prevention of a danger to human life or health from environmental impacts, such as those that aim at:

(a) the prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants,

(b) the management, control or elimination of [CAN: environmentally hazardous or toxic] chemicals [CAN: substances, material] and wastes, and the dissemination of information related thereto, and

(c) the conservation and protection of wild flora or fauna, including endangered species and their habitats, as well as protected areas;

but does not include any measures solely related to worker health and safety, which fall under Chapter X - Labour, nor any measures [EU: that a Party implements for the purpose of] [CAN: for which the purpose is] managing subsistence or aboriginal harvesting of natural resources.

[Canadian Alternate Text to Replace Effective Enforcement Clarification:

The Parties recognize that each Party retains the right to a reasonable exercise of prosecutorial, investigatory, regulatory or compliance discretion and to make *bona fide* decisions regarding the allocation of enforcement resources with respect to other environmental matters determined to have a higher priority, while not undermining the fulfilment of the obligations undertaken under this Chapter.]

Article 2: Right to regulate and levels of protection

Recognizing the right of each Party to set its own environmental priorities, to establish its own domestic levels of environmental protection, and to adopt or modify its relevant laws and policies accordingly in a manner consistent with the multilateral environmental agreements to which they are a party and with this Agreement, each Party shall seek to ensure that those

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laws and policies provide for and encourage high levels of environmental protection and shall strive to continue to improve those laws and policies and their underlying levels of protection.

[EU: Article 8: Scientific and technical information]

Each Party shall, when preparing and implementing measures aimed at environmental protection which may affect trade between the Parties or foreign direct investment, take account of relevant scientific and technical information and related international standards, guidelines or recommendations if they exist, and of the precautionary principle. Where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing protective measures.]

Article 2: Multilateral Environmental Agreements

1. The Parties recognise the value of international environmental governance and agreements as a response of the international community to global or regional environmental problems and stress the need to enhance the mutual supportiveness between trade and environment policies, rules and measures. In this context, the Parties commit to consulting and co-operating as appropriate with respect to negotiations on [EU: trade-related environmental issues and other trade-related] environmental matters of mutual interest.
2. [EU: The Parties shall effectively implement their respective laws and practices, in their whole territories,] [CAN: Each Party affirms the rights and obligations in] the Multilateral Environmental Agreements to which [EU: they are parties⁶⁵] [CAN: it is a party].
3. The Parties shall regularly exchange information [CAN: as appropriate] [EU: on their respective situation and advancements as regards additional ratifications of] [CAN: with regards to the implementation of] Multilateral Environmental Agreements or amendments to such Agreements [CAN: to which they are both parties].

[EU: Nothing in this Agreement shall prevent Parties from adopting or maintaining measures to implement the Multilateral Environmental Agreements to which they are party provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade.]

[EU: Article 3: EU: Upholding levels of protection] [CAN: Article X.4: Compliance with and Enforcement of Environmental Laws; Article X.5: Non-derogation]⁶⁶

1. The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the levels of protection afforded in domestic environmental laws.

⁶⁵ [EU: For the purposes of article 1.2, the multilateral environmental agreements referred to shall encompass those protocols, amendments, annexes and adjustments binding on the Parties.]

⁶⁶ It is suggested to postpone the discussion on the (possible) titles to the various provisions and to focus on substance at this stage of the negotiations.

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2. A Party shall not fail to effectively enforce its environmental laws through a sustained or recurring course of action or inaction, as an encouragement for trade or investment.
3. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental laws, as an encouragement for trade or the establishment, acquisition, expansion or retention of an investment [EU: or] [CAN: of] an investor in its territory.

[CAN: Article X.8: Private Access to Remedies

1. Each Party shall ensure that interested persons residing in or established in the territory of such Party may request the Party's competent authorities to investigate alleged violations of its environmental laws and shall give such requests due consideration, in accordance with its law.]

Article X.9: Procedural Guarantees

1. In connection with the obligations in article 3, each Party shall ensure that administrative or judicial proceedings are available to persons⁶⁷ with a legally recognized interest in a particular matter [Cda: or maintaining impairment of a right,] subject to the conditions specified under its domestic law, in order to permit effective action against infringements of its environmental laws, including appropriate remedies for violations of such laws.

2. Each Party shall, within the framework of its legal system, ensure that the proceedings referred to in paragraph X are not unnecessarily complicated or prohibitively costly, do not entail unreasonable time limits or unwarranted delays, provide injunctive relief, where appropriate, and are fair [CAN: ,] [EU: and] equitable [CAN: and transparent], including by:
 - A. providing defendants with reasonable notice when a proceeding is initiated, including a description of the nature of the proceeding and the basis of the claims;
 - B. [CAN: being open to the public, except where the administration of justice otherwise requires];
 - C. affording the parties to the proceedings a reasonable opportunity to support or defend their respective positions, including by presenting information or evidence, prior to any final decision;
 - D. providing that final decisions are made in writing and give reasons as appropriate to the case, [CAN: made available to the parties to the proceedings without undue delay, and to the public,] and based on information or evidence in respect of which the parties were offered the opportunity to be heard; and
 - E. allowing the parties to an administrative proceeding an opportunity for review and, where warranted, correction of final administrative decisions within a reasonable time by a tribunal established by law, with appropriate guarantees of independence and impartiality of decision-makers.

⁶⁷ Including non-governmental organisations promoting environmental protection and meeting any requirements under domestic law.

Article X.5: [Trade favouring environment protection]

1. The Parties are resolved to make efforts to facilitate and promote trade and investment in environmental goods and services, [EU: as well as eco-labelled goods,] including through addressing the reduction of non-tariff barriers related to these goods and services.
2. The Parties shall pay special attention to facilitating the removal of obstacles to trade or investment concerning goods and services of particular relevance for climate change mitigation [EU: , in particular renewable energy goods and related services.].

[CAN: Article X.11: Measures to Enhance Environmental Performance] [EU: See Article 3, EU proposal on Trade & Sustainable Development]

- [CAN: 1. The Parties recognize that voluntary and incentive-based measures can enhance environmental performance and contribute to the achievement and maintenance of environmental protection, complementing regulatory provisions under environmental laws. In accordance with its laws and policies, each Party shall promote the development and use of such measures.
2. In accordance with its laws and policies, each Party shall promote the development, establishment, maintenance or improvement of performance goals and standards used in measuring environmental performance.]

[EU: Article 6: Trade in forestry products]

The Parties recognise the importance of ensuring the conservation and sustainable management of forests and forests' contribution to the Parties' economic, environmental and social objectives. To this end, the Parties undertake to:

- (a) Promote trade in forest products derived from sustainably managed forests, harvested in accordance with the domestic legislation of the country of harvest.
- (b) Exchange information on measures to promote consumption of timber and timber products from sustainably managed forests and, where relevant, cooperate to develop such measures.
- (c) Adopt actions to combat illegal logging and related trade, including with respect to third countries, as appropriate.
- (d) Exchange information on actions to combat illegal logging and related trade and where relevant cooperate to maximise the impact and ensure the mutual supportiveness of their respective policies aiming at excluding illegally harvested timber and timber products from trade flows.
- (e) Promote the effective use of CITES with regard to timber species that are considered at risk
- (f) Cooperate at the regional and global levels with the aim of promoting sustainable management of all types of forests.

Article 7: Trade in fisheries products

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The Parties recognise the importance of ensuring the conservation and management of fish stocks in a sustainable and responsible manner in order to guarantee their sustainability. To this end, the Parties undertake to:

- (A) Conserve fish stocks by adopting effective monitoring and control measures to ensure full compliance with applicable conservation measures, such as observer schemes, vessel monitoring schemes, transshipment control, inspections at sea and port state control.
- (B) Adopt actions and cooperate to combat illegal, unreported and unregulated (IUU) fishing. In this context, the Parties shall facilitate the exchange of information on any IUU activities in their waters and implement policies and measures to exclude IUU products from trade flows.
- (C) Cooperate with and within Regional Fisheries Management Organisations as widely as possible with the aim of achieving good governance.
- (D) Improve the efficiency of their markets, in particular by providing information to consumers and promoting traceability.]

[EU: Article 9:] [CAN: Annex 1:] Cooperation on environment issues

1. The parties recognise that enhanced cooperation is an important element to advance the objectives of this Chapter, and they commit to cooperate, through actions and instruments that may include technical exchanges, exchanges of information and best practices, research projects, studies, reports, conferences and workshops, on trade-related environmental issues of common interest, in areas such as:

- (a) the potential impacts of this Agreement on the environment and ways to enhance, prevent or mitigate them, taking into account impact assessments carried out by the Parties;
- (b) activities in international fora dealing with issues relevant for both trade and environmental policies, including in particular the WTO, the OECD, the United Nations Environment Programme and multilateral environmental agreements [CAN: , including the relationship between multilateral environmental agreements and international trade rules];
- (c) the environmental dimension of corporate social responsibility and accountability, including on the implementation and follow-up of internationally agreed guidelines, [EU: fair and ethical trade, private and public certification and labelling schemes including eco-labelling and green public procurement];
- (d) the trade impact of environmental regulations and standards as well as the environmental impacts of trade and investment rules including on the development of environmental regulations and policy;
- (e) [CAN: the economic and] trade-related aspects of the current and future international climate change regime [CAN: and/or domestic climate policies and programs covering both mitigation and adaptation,] including issues relating to [EU: global] carbon markets, ways to address adverse effects of trade on climate, as well as means to promote [EU: low-carbon technologies and] [CAN: development and deployment of climate-friendly

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technologies and] energy efficiency [CAN: including the coordination of such development];

- (f) [CAN: research and innovation in all dimensions of environmental science and technology – e.g. environment, climate, energy and health – involving all relevant participants];

Note: Placement in CETA pending progress on the Cooperation Chapter.

- (g) [EU: cooperation on measures to promote sustainable fishing practices and trade in sustainably managed fish products];
- (h) [EU: cooperation on trade-related measures to tackle deforestation including by addressing problems regarding illegal logging];
- (i) trade and investment in environmental goods and services, including environmental and green technologies and practices, renewable energy, energy efficiency and water use, conservation and treatment;
- (j) [EU: cooperation on trade-related aspects of the conservation and sustainable use of biological diversity;]

Note: Subject to further consultations.

- (k) the promotion of life-cycle management of goods, including carbon accounting and end of life management – extended producer responsibility, recycling and reduction of waste, and other best practices; or
- (l) [CAN: education relative to the link between the economy and the environment.]
- (m) [EU: exchange of views on the relationship between multilateral environmental agreements and international trade rules;]

2. The parties will consider views or input from the public and interested stakeholders for the definition and implementation of their cooperation activities, and they may involve them further in such activities, as appropriate.

Article ? Institutional mechanisms⁶⁸

(i) Each Party shall designate one office which shall serve as a Point of Contact with the other Party for the purposes of implementing this Chapter, including with regard to:

- a) Cooperative programs and activities in accordance with Article ...
- b) [to be completed after discussion of other relevant provisions: reference to submissions from stakeholders and the public]
- c) information to be provided to the other Party, the review panels and the public.

(ii) The Parties hereby establish a [Name to be determined] to:

- Oversee the implementation of this Chapter and review progress under it;
- Discuss matters of common interest; and
- Address any other matter within the scope of this Chapter as the Parties jointly decide.

⁶⁸ Negotiator's note: Without prejudice to horizontal discussions on the institutional mechanisms and structures under CETA.

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- (iii) The [Name to be determined] shall be comprised of [high level representatives] [senior officials]⁶⁹ of the Parties responsible for matters covered by this Chapter.
- (iv) Unless the Parties otherwise jointly decide, the [Name to be determined] shall convene within one year, and thereafter as often as the Parties consider necessary, and each meeting shall include a session with the public to discuss matters relating to the implementation of this Chapter.
- (v) [EU: The Parties shall take into account the activities of relevant multilateral environmental organisations or bodies so as to promote greater cooperation and coherence between the work of the Parties and these organisations.]

Article X

The NAME shall promote transparency and public participation. To this end:

- i. all decisions and reports that the NAME may adopt shall be made public, unless the NAME decides otherwise;
- ii. the NAME shall present updates on matters related to this Chapter, including its implementation, to the Civil Society Forum referred to in [Article]. Any views or opinions of the Civil Society Forum may be submitted directly to the Parties, or [EU: through the domestic advisory group(s)]. The NAME shall report annually on the follow-up given to such communications;
- iii. each Party shall be open to receive and shall give due consideration to submissions from the public on matters related to this Chapter, including communications on implementation concerns; [EU: each Party shall inform its domestic advisory group(s) of such communications;] the NAME shall report annually on matters it may address pursuant to such communications for those matters brought to its attention.

Article X.7: Public Information

1. Each Party, as well as complying with Art X.01 of Transparency Chapter, shall encourage public debate with and among non-State actors as regards the development and definition of policies that may lead to the adoption by public authorities of environmental laws and regulations.
2. Each Party shall promote public awareness of its environmental laws and regulations, as well as enforcement and compliance procedures, by ensuring the availability of information to stakeholders.

[EU: See Article 2, EU proposal on Trade & Sustainable Development]

See Article 5, EU proposal on Trade & Sustainable Development

Article 10: Institutional mechanisms⁷⁰

Each Party shall consult a domestic environment or sustainable development advisory group(s), or establish new ones when they do not exist, to provide views and advice on issues relating to this Chapter. Such groups may submit opinions and make recommendations on any

⁶⁹ Negotiators' note: choice of terms to be decided, consistent with approach to be taken in labour chapter and CETA

matter related to this Chapter on their own initiative. The domestic advisory group(s) comprise(s) independent representative organisations of civil society in a balanced representation of environmental groups, business organisations, as well as other relevant stakeholders as appropriate.]

Article X.: Government Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the contact point of the other Party. The request shall present the matter clearly, identifying the questions at issue and providing a brief summary of any claims under this Chapter. Consultations shall commence promptly after a Party delivers a request for consultations.
2. During consultations, each Party shall provide the other with sufficient information in its possession to allow a full examination of the matters raised, [subject to any domestic legislation regarding confidential personal and commercial information]⁷¹.
3. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.
4. Where relevant and agreed to by both Parties, the Parties shall seek the information or views of any person, organisation or body that may contribute to the examination of the matter at issue, including the relevant international organisations or bodies.
5. If a Party considers that the matter needs further discussion, that Party may request that [NAME] be convened to consider the matter by delivering a written request to the contact point of the other Party. The [NAME] shall convene promptly and endeavour to agree on a resolution of the matter. [EU: Where appropriate, it shall seek the advice of the Parties' domestic advisory group(s).]
6. Any solutions or decisions on matters discussed until this Article shall be made publicly available.

[CAN: Article XXX Mediation.

Parties may have recourse to mediation as set out in Annex II of the Dispute Settlement Chapter, which shall be applied *mutatis mutandis*.]

ARTICLE X Panel of Experts⁷²

1. A Party may, 90⁷³ days after the delivery of a request for consultations under Article X.1 request that a Panel of Experts be convened to examine a matter that has not been satisfactorily addressed through government consultations.
2. Subject to the provisions of this [Article(s)], the Parties shall apply [Can: *mutatis mutandis* the] [EU: The provisions in Section 3, Sub-Section 1 [Dispute Settlement Procedures] of Chapter 14 [Dispute Settlement], as well as the] Rules of Procedure

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and Code of Conduct set out in Annex I and II of the Chapter on Dispute Settlement, unless the Parties agree otherwise.

[CAN: Article XXX Terms of Reference of the Review Panel

Unless the Parties otherwise agree, the terms of reference for the Review Panel shall be as follows:

“to examine, in the light of the relevant provisions of the Trade and Environment Chapter, the matter referred to in the request for the establishment of a Review Panel, and to make such findings, determinations, and recommendations as will assist the Parties in resolving the matter.”]

[CAN: Article XXX Criteria for Selecting Panellists

1. The Review Panel shall be composed of three panellists appointed by the Parties.]

[EU: 3. The [Joint Body] shall, at its first meeting after the entry into force of this Agreement, establish a list of at least 15 persons who are willing and able to serve as experts in Panel procedures. Each Party shall propose five individuals to serve as experts. The Parties shall also select five individuals who are not nationals of either Party and who shall act as chairperson to the Panel of experts. The [Joint Body] will ensure that the list is always maintained at this level.]

[CAN: 2.] [EU: 4.] The experts proposed as panelists shall comprise individuals with specialized knowledge or expertise in environmental law, issues addressed in this Chapter or the resolution of disputes arising under international agreements, [CAN: as well as their objectivity, reliability and sound judgement.] They shall be independent, serve in their individual capacities and not take instructions from any organisation or government with regard to issues related to the matter at stake, or be affiliated with the government of any Party, and shall comply with the Code of Good Conduct.

[CAN: ARTICLE XXX: COMPOSITION OF THE REVIEW PANEL

[EU: 5. For matters arising under this Chapter, the Panel of Experts shall be composed of experts from the list referred to in paragraph 3, in accordance with the relevant provisions of Section 3, Sub-Section 1 [Dispute Settlement Procedures] of Chapter 14 [Dispute Settlement].]

1. For purposes of selecting a Review Panel, the following procedures shall apply:

a) within 20 days of receiving of the request to establish a Review Panel, each Party shall select one panelist; and,

b) if one Party fails to select a panelist within such period, the other Party shall select the panelist from among qualified individuals who are nationals of the Party that failed to select its panelist.

2. The following procedures shall apply to the selection of the chair:

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(a) the Party that is the subject of the request shall provide the requesting Party with the names of three qualified candidates. The names shall be provided within 20 days of receiving the request to establish the Review Panel;

(b) the requesting Party may choose one of the individuals to be the chair or, if the names were not provided or none of the individuals are acceptable, provide the Party that is the subject of the request with the names of three individuals who are qualified to be the chair. Those names shall be provided no later than five days after receiving the names under subparagraph (i) or 25 days after the receipt of the request for the establishment of the Review Panel;

(c) the Party that is the subject of the request may choose one of the three individuals to be the chair within five days of receiving the names under subparagraph (ii), failing which the chair shall be selected [randomly][by lot] from the six candidates proposed by the Parties pursuant to (i) and (ii) within a further five days.]

(d) if the chair of the panel withdraws, is removed or becomes unable to serve, the Parties shall endeavour to decide on the appointment of a replacement within twenty days, failing which the replacement shall be selected [randomly] [by lot] from the remaining candidates proposed by the Parties pursuant to (i) and (ii) within five days.]

[EU: 6. In matters related to the respect of multilateral agreements as set out in Article 2, the Panel should seek advice from MEA bodies, and it shall rely on any pertinent available interpretative guidance, findings or decisions adopted in those bodies.]

[CAN: ARTICLE XXX Interim and Final Reports]

[CAN: 1.] [EU: 7.] The Panel of Experts shall issue to the Parties an interim and a final report setting out the findings of facts, its determinations as to whether the responding Party has conformed with its obligations under this chapter and the rationale behind any findings, determinations and recommendations that it makes. [CAN: The Review Panel shall prepare the initial report within 120 days of the date the last panelist is selected, or as otherwise decided by the Parties, and shall submit such report to the Parties. The Parties may provide comments to the Panel on the initial report within 60 days of its presentation. The Review Panel shall submit the final report to the Parties within 30 days of receiving comments from the Parties.] Each Party shall make the final report publicly available within 30 days of its issuance.

[CAN: 2.] [EU: 8.] [The Panel's report and recommendations shall not be binding on the Parties.]⁷⁴ If in the final report the Panel determines that there has been non-conformity, the Parties shall engage in discussions and shall endeavour, taking into account the Panel's report, to identify appropriate measures or, where appropriate, to decide upon a mutually satisfactory action plan. The Party concerned shall inform [EU: its advisory groups and] the other Party of its decisions on any actions or measures to be implemented, no later than [three] months after the public release of the Panel's report. The follow-up to the report and the recommendations of the Panel of Experts shall be monitored by the NAME. [EU: The advisory bodies and] The Civil Society Forum may submit observations to the NAME in this regard.

⁷⁴ EU prefers to delete text.

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3. [For greater certainty, a Party's decision not to follow or to depart from the Panel's report and recommendations shall not trigger the imposition of any economic penalties by the other Party.]⁷⁵

Article XXX Dispute Settlement

For any matter arising under this Chapter, the Parties shall only have recourse to the rules and procedures provided for in Articles X and Y.

⁷⁵ EU prefers to delete text.

TRADE AND SUSTAINABLE DEVELOPMENT

Preamble of the CETA (submitted by Canada to the EU)

Proposed text to be included in the preamble of the CETA to underscore the importance of sustainable development:

[UNDERTAKE each of the preceding [trade-related language outlined previously in the preamble] in a manner that is consistent with environmental protection and conservation];

ENHANCE AND ENFORCE environmental laws and regulations, and strengthen cooperation on environmental matters;

PROTECT, ENHANCE AND ENFORCE basic workers' rights, strengthen cooperation on labour matters and build on their respective international commitments on labour matters;

PROMOTE sustainable development;

SUSTAINABLE DEVELOPMENT BUILDING ON THE EU PROPOSAL – COULD BE A CHAPTER ON TRADE AND SUSTAINABLE DEVELOPMENT

Article 1: Context and objectives

1. Recalling the Rio Declaration on Environment and Development of 1992, the Agenda 21 on Environment and Development, the Johannesburg Declaration and Plan of Implementation of 2002 on Sustainable Development, the 2006 Ministerial declaration of the UN Economic and Social Council on Full Employment and Decent Work, and the 2008 ILO Declaration on Social Justice for a Fair Globalisation, the Parties recognise that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development, and they reaffirm their commitment to promoting the development of international trade in such a way as to contribute to the objective of sustainable development, for the welfare of present and future generations. In particular, the Parties underline the benefit of considering trade related labour and environmental issues as part of a global approach to trade and sustainable development.
2. In this regard, through the implementation of Chapters X+1 and X+2⁷⁶, the Parties aim to:
 - a. promote sustainable development through the enhanced coordination and integration of their respective labour, environmental and trade policies and measures;
 - b. promote dialogue and cooperation between the Parties with a view to developing their trade and economic relations in a manner supportive of their respective labour and environmental protection measures and standards, and to upholding their environmental and labour protection objectives in a context of freer, open and transparent trade relations;
 - c. enhance compliance with, and enforcement of, labour and environmental [EU: multilateral agreements and]domestic laws;
 - d. promote the full use of instruments, such as impact assessment and stakeholder consultations, in the regulation of trade, labour and environmental issues and encourage businesses, civil society organisations and citizens to develop and implement practices that contribute to the achievement of sustainable development goals;
 - e. promote public consultation and participation in the discussion of sustainable development issues arising under this Agreement and in the development of relevant domestic laws and policies.

Article 2: Transparency

The Parties stress the importance of ensuring transparency as a necessary element to promote public participation and information within the context of this Chapter, in accordance with its provisions, with Chapter [Transparency] and with the relevant provisions in Chapters [labour] and [environment].

Article 3: Co-operation and promotion of trade supporting sustainable development

⁷⁶ Refer to chapters on Environment and Labour

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- (iii) The Parties recognise the value of international cooperation to achieve the goal of sustainable development and the integration at the international level of economic, social and environmental development and protection initiatives, actions and measures. Therefore, in the context of this Agreement, they agree to dialogue and consult with each other with regard to trade-related sustainable development issues of common interest.
- (iv) The Parties affirm that trade should promote sustainable development. Accordingly, in the context of their respective policy or legislative frameworks, each Party shall strive to promote trade and economic flows and practices that contribute to enhancing decent work and environmental protection, in particular by:
- A. [CAN: Facilitating trade of sustainably produced or manufactured products and goods] [EU: Encouraging trade in products under criteria of environmental, social and economic sustainability including products that are the subject of schemes such as Fair and Ethical Trade schemes];
 - b. Encouraging voluntary best practices of corporate social responsibility by enterprises, to strengthen coherence between economic, social and environmental objectives.⁷⁷
 - c. [CAN: Establish a dialogue and share information between Parties on respective stakeholder consultation processes and results on best practices for Sustainable Development.]

Canada's Note: In c, reference to stakeholder consultation processes could be removed depending on the options retained for public participation. In which case, c would read: "Share information between Parties on best practices for Sustainable Development".

3. The Parties recognise the importance of addressing specific sustainable development issues by assessing the potential economic, social and environmental impacts of possible actions, taking account of the views of stakeholders. Therefore, to identify any need for action that may arise in connection with this Agreement, each Party commits to review, monitor and assess the impact of the implementation of this Agreement on sustainable development in its territory. The Parties may agree to carry out joint assessments. These assessments will be conducted in a manner that is adapted to the practices and conditions of each Party, through the respective participative processes of the Parties, as well as those set up under this Agreement.

[CAN:

Article 3bis

Forest Products

The Parties recognize the importance of the sustainable management of forests for providing environmental, economic and social opportunities for present and future generations. To this end, the Parties underline the importance of the promotion of trade in forest products from forests harvested in accordance with the domestic legislation of the country of origin, and the

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exchange of information aiming to achieve this goal, including through the exchange of experiences and perspectives on multilateral and plurilateral organizations and processes to which the Parties are both members."

Article 3ter

Fisheries and Aquaculture Products

The Parties recognize the importance of the sustainable management of fisheries and aquaculture for providing environmental, economic and social opportunities for present and future generations. To this end, the Parties underline the importance of the promoting responsible management of trade in fish and seafood products caught or farmed in accordance with the domestic legislation of the country of origin, and exchange of information aiming to achieve this goal, including through the exchange of experiences and perspectives on multilateral and plurilateral organizations and processes to which the Parties are both members. The Parties also underline the importance of conserving fish stock by adopting effective monitoring, control and surveillance measures and associated sanctions, and cooperating on actions to combat illegal, unreported and unregulated fishing.]

Article 4: Institutional Arrangements

1. The [NAME – institution of the labour chapter] and the [NAME – institution of the environment chapter] shall meet in joint sessions comprising relevant experts in order to oversee the implementation of this Chapter, including cooperative activities and review of impacts of the Agreement on sustainable development, and to address in an integrated manner any matters of common interest in relation to the interface between economic development, social development and environmental protection.
 2. There shall be a joint session on sustainable development within the first year of the entry into force of this Agreement, and thereafter as often as the Parties consider necessary. The Contact Points referred to in [relevant articles of the labour and environment chapters] shall be responsible for communications between the Parties regarding the scheduling and organisation of joint sessions.
- (v) Articles X and Y in Chapters [labour] and [environment] shall apply to the joint sessions of the [NAME – institution of the labour chapter] and the [NAME – institution of the environment chapter].

[EU: Article 5: Civil society forum

1. The Parties shall facilitate meetings of civil society organisations established in their territories at an EU-Canada Civil Society Forum, in order to conduct a dialogue encompassing sustainable development aspects of trade relations between the Parties.
2. The Civil Society Forum shall be convened once a year unless otherwise agreed by the Parties. The Parties shall promote a balanced representation of relevant interests, including independent representative organisations of employers, workers, environmental interests and business groups, local communities, as well as other relevant stakeholders as appropriate.

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3. The Parties shall agree by decision of [the Board on Trade and Sustainable Development] on the operation of the Civil Society Forum no later than one year after the entry into force of this Agreement.]

[CAN: The Parties will facilitate discussion by representatives of civil society at a civil society forum in order to conduct a dialogue encompassing sustainable development aspects of the trade agreement between the Parties. The discussions, including by electronic means such as virtual meetings, will be facilitated once a year unless otherwise agreed by the Parties. The Parties will promote a balanced representation of relevant interests, including independent representative organisations, industry and stakeholders as appropriate.]

Negotiators' note: it is agreed to establish a civil society forum in the trade & sustainable development chapter, rather than through both labour and environment chapters.

[EU: Article 6: Definitions

For the purposes of this Chapter and Chapters X+1 and X+2:

2. "Labour" includes the issues relevant to the strategic objectives of the International Labour Organisation, through which the Decent Work Agenda is expressed, as agreed on in the International Labour Organisation 2008 Declaration on Social Justice for a Fair Globalisation.
3. "Environment" includes terrestrial and marine ecosystems, atmospheric conditions and climate change issues.]

Negotiators' Note: We will revert to this Article once the scope/definitions in the Labour and Environment Chapter are clear to assess if definitions here are required at all.

Note to negotiators: Applicable dispute resolution provisions to be discussed.

L.

EXCEPTIONS

[EU comment: Exceptions and related definitions to be discussed in relevant negotiating groups. Placement in the text of the agreement (within the relevant chapters and/or as a separate chapter) to be decided at a later stage]

Article X.01: Definitions

For purposes of this Chapter:

competition authority means:

- (a) *for Canada, the Commissioner of Competition or a successor notified to the other party through the Coordinators; and*
- (b) *for the European Union, the Commission of the European Union as to its responsibilities pursuant to the competition laws of the European Union.*

Both sides to double-check

designated authority means:

- (a) in the case of Canada, the Assistant Deputy Minister for Tax Policy, Department of Finance, or a successor authority notified to the other party through the Coordinators; and
- (b) [in the case of the EC – to be discussed under the article on taxation]

information protected under its competition laws means:

- (a) for Canada, information within the scope of Section 29 of the *Competition Act*, R.S. 1985, c.34, or any successor provision; and
- (b) for the European Union this means information within the scope of Article 28 of Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty or Article 17 of Council Regulation No 139/2004 on the control of concentrations between undertakings, or any successor provisions.

[person engaged in a cultural industry means a person engaged in the following activities:

- (a) the publication, distribution or sale of books, magazines, periodicals or newspapers in print or machine-readable form, except when printing or typesetting any of the foregoing is the only activity;
- (b) the production, distribution, sale or exhibition of film or video recordings;

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- (a) the production, distribution, sale or exhibition of audio or video music recordings;
- (a) the publication, distribution or sale of music in print or machine-readable form; or
- (a) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television and cable broadcasting undertakings and all satellite programming and broadcast network services.]
[EC comment: linked to discussions on cultural exception]

[**tax convention** means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

tax and **taxation measure** does not include:

- (a) a “customs duty, or
- (b) a measure listed in exceptions (b), (c), or (d) in the definition of “customs duty” in Article 1.01 (Initial Provisions and General Definitions – Definitions of General Application).] [EC comment: linked to discussions on taxation article]

[Article X.02: General Exceptions

1. [For the purposes of Chapters X through Y and Chapter Z (National Treatment and Market Access for Goods, Rules of Origin, Customs Procedures, Trade Facilitation, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Emergency Action and Electronic Commerce), GATT 1994 Article XX is incorporated into and made part of this Agreement. The Parties understand that the measures referred to in GATT 1994 Article XX (b) include environmental measures necessary to protect human, animal or plant life or health. The Parties further understand that GATT 1994 Article XX (g) applies to measures for the conservation of living and non-living exhaustible natural resources.][EC comment: for discussion in groups dealing with trade in goods and sustainable development]

[2. For the purposes of Chapters X, Y, and Z (Cross-Border Trade in Services, Telecommunications, Temporary Entry for Business Persons, and Electronic Commerce) GATS Article XIV (a), (b) and (c) is incorporated into this Agreement. The Parties understand that the measures referred to in GATS Article XIV (b) include environmental measures necessary to protect human, animal or plant life or health.

3. For the purposes of Chapter X (Investment):

- (a) a Party may adopt or enforce a measure necessary:
 - (i) to protect human, animal or plant life or health, which the Parties understand to include environmental measures necessary to protect human, animal or plant life or health,
 - (ii) to ensure compliance with domestic law that is not inconsistent with this Agreement, or

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- (iii) for the conservation of living or non-living exhaustible natural resources;
- (b) provided that the measure referred to in sub paragraph (a) is not:
 - (i) applied in a manner that constitutes arbitrary or unjustifiable discrimination between investments or between investors, or
 - (ii) a disguised restriction on international trade or investment.]

Article X.03: National Security

This Agreement does not:

- (a) require a Party to furnish or allow access to information if that Party determines that the disclosure of this information would be contrary to its essential security interests;
- (b) prevent a Party from taking an action that it considers necessary to protect its essential security interests:
 - (i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment;
 - (ii) taken in time of war or other emergency in international relations; or
 - (iii) relating to fissionable and fusionable materials or the materials from which they are derived; or
- (c) to prevent a Party from taking any action in order to carry out its international obligations for the purpose of maintaining international peace and security.

Article X 04: Taxation (a consolidated draft text)

(EU proposals: *in italics*, CAN proposals: **in bold**)

1. Except as set out in this Article, this Agreement does not apply to a taxation measure.
2. *[EU: Nothing in this Agreement or in any arrangement adopted under this Agreement shall be construed to prevent the Parties from distinguishing, in the application of the relevant provisions of their respective tax law, between taxpayers who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested.]*
3. *[EU: Nothing in this Agreement or in any arrangement of the Agreement shall be construed to prevent the adoption or enforcement of any measure aimed at preventing the avoidance or evasion of taxes pursuant to the tax provisions of agreements to avoid double taxation or other tax arrangements or domestic tax law.]*

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4. This Agreement does not affect the rights and obligations of a Party⁷⁸ under a tax convention. In the event of inconsistency between this Agreement and a tax convention, that convention prevails [*to the extent of the inconsistency*]. Where a provision with respect to a taxation measure under this Agreement is similar to a provision under a tax convention, the competent authorities identified in the tax convention shall use the procedural provisions of that tax convention to resolve an issue that may arise under this Agreement.

5. [CAN: Notwithstanding paragraph 4 :

Article X (National Treatment and Market Access for Goods – National Treatment) and the provisions of this Agreement necessary to give effect to that Article apply to a taxation measure to the same extent as Article III of the GATT 1994.]

6. [CAN: Subject to paragraphs 4 and 7:

(a) **Article X (Cross-Border Trade in Services – National Treatment) and Article X (Financial Services – National Treatment) apply to a taxation measure on income, capital gains or on the taxable capital of corporations that relate to the purchase or consumption of a particular service, and**

(b) **Articles X and Y (Investment – National Treatment and Most-Favoured-Nation Treatment), Articles X and Y (Cross-Border Trade in Services – National Treatment and Most-Favoured-Nation Treatment) and Articles X and Y (Financial Services – National Treatment and Most-Favoured-Nation Treatment) apply to a taxation measure, other than one on income, capital gains or on the taxable capital of corporations.]**

7. [CAN: Paragraph 6 does not:

(a) **impose a most-favoured-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;**

(b) **impose on a Party an obligation making the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, pension trusts or pension plans conditional on a requirement that the Party maintain continuous jurisdiction over the pension trust or pension plan;**

(c) **impose on a Party an obligation making the receipt, or continued receipt, of an advantage relating to the purchase or consumption of a particular service conditional on a requirement that the service be provided in its territory;**

(d) **apply to a non-conforming provision of an existing taxation measure;**

(e) **apply to the continuation or prompt renewal of a non-conforming provision of an existing taxation measure;**

⁷⁸ to be reviewed once a definition of a Party for the EU is agreed

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(f) apply to an amendment to a non-conforming provision of an existing taxation measure provided that the amendment does not decrease its conformity, as it existed immediately before the amendment, with the Articles referred to in paragraph 5; or

(g) apply to a new taxation measure that is aimed at ensuring the equitable and effective imposition or collection of taxes (including, for greater certainty, a measure that is taken by a Party in order to ensure compliance with the Party's taxation system or to prevent the avoidance or evasion of taxes) and that does not arbitrarily discriminate between persons, goods or services of the Parties.]

8. [CAN: Subject to paragraph 4, and without prejudice to the rights and obligations of the Parties under paragraph 5, Article X (Investment – Performance Requirements) applies to a taxation measure.]

9. [CAN: Notwithstanding paragraph 4, Article 9X (Investment – Expropriation) applies to a taxation measure, but an investor may not invoke that Article as the basis for a claim under Articles X (Investment – Claim by an Investor of a Party on Its Own Behalf) or X (Investment – Claim by an Investor of a Party on Behalf of an Enterprise), where the designated authorities of the Parties have determined under this paragraph that a taxation measure is not an expropriation. The investor shall refer the issue of whether a measure is not an expropriation for a determination to the designated authorities of the Parties at the time that it gives notice under subparagraph X(X) of Article X (Investment – Conditions Precedent to Submission of a Claim to Arbitration). If, within a period of six months from the date of this referral, the designated authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation, the investor may submit its claim to arbitration under Article X (Investment – Submission of a Claim to Arbitration).]

10. [CAN: In order to give effect to paragraphs 1 and 4:

(a) If an issue arises as to whether a measure of a Party is a taxation measure in a dispute between the Parties, either Party may refer the issue to the designated authorities of the Parties. The designated authorities shall decide the issue of whether the measure is a taxation measure, and their decision shall bind a panel established under Article X (Dispute Settlement – Establishment of a Panel) for the dispute. If a Party has referred the issue to the designated authorities and they have not decided the issue within six months of the referral, the panel shall decide the issue.

(b) If an issue arises as to whether a measure is a taxation measure in connection with a claim by an investor of a Party, the Party that has received notice of intention to submit a claim or against which an investor of a Party has submitted a claim may refer the issue to the designated authorities of the Parties. The designated authorities shall decide whether the measure is a taxation measure, and their decision shall bind a Tribunal with jurisdiction over the claim. A Tribunal seized of a claim in which the same issue arises may not proceed while the designated authorities are considering the issue. If a Party has referred the issue to the designated authorities and they have not decided the issue within six months of the referral, the Tribunal shall decide the issue.

(c) If an issue arises as to whether a tax convention prevails over this Agreement in a dispute between the Parties, a Party to the dispute may refer the issue to the designated authorities of the Parties. The designated authorities shall consider the issue and decide

whether the tax convention prevails. If within six months of the referral of the issue to the designated authorities, they decide with respect to the measure that gives rise to the issue that the tax convention prevails, procedures concerning that measure may not be initiated under Article X (Dispute Settlement – Establishment of a Panel). Procedures concerning the measure may not be initiated while the designated authorities are considering the issue. If a Party has referred the issue to the designated authorities and they have not decided the issue within six months of the referral, the panel shall decide the issue.

(d) If an issue arises as to whether a tax convention prevails over this Agreement prior to the submission of a claim by an investor of a Party, the Party that has received notice of intention to submit a claim may refer the issue to the designated authorities of the Parties. The designated authorities shall consider the issue and decide whether the tax convention prevails. If within six months of the referral of the issue to the designated authorities, they decide with respect to the measure that gives rise to the issue that the tax convention prevails, a claim concerning that measure may not be submitted under Article X (Investment – Submission of a Claim to Arbitration). A claim concerning the measure may not be submitted while the designated authorities are considering the issue. An investor of a Party that fails to identify a taxation measure in its notice of intention to submit a claim may not submit a claim concerning that measure under Article X (Investment – Submission of a Claim to Arbitration). If a Party has referred the issue to the designated authorities and they have not decided the issue within six months of the referral, the panel shall decide the issue.]

11. [CAN: If an investor invokes Article X (Investment – Expropriation) as the basis for a claim under Article X (Investment – Claim by an Investor of a Party on Its Own Behalf) or X (Investment – Claim by an Investor of a Party on Behalf of an Enterprise), the designated authorities shall make a determination under paragraph 9 of whether a measure is an expropriation concurrently with a decision under paragraph 10(b) of whether the measure is a taxation measure.]

12. [CAN: The designated authorities seized of an issue under paragraphs 8, 10 or 11 may modify the time period allowed to decide the issue.]

13. [CAN: This Agreement does not require a Party to furnish or allow access to information whose disclosure would be contrary to that Party's law protecting information concerning the taxation affairs of a taxpayer.]

Article X.05: Disclosure of Information

- [1. This Agreement does not require a Party to furnish or allow access to information which if disclosed would impede law enforcement or the disclosure of which is prohibited or restricted under its law"]
2. In the course of a dispute settlement procedure under this Agreement:
- (a) a Party is not required to furnish or allow access to information protected under its competition laws;
 - (b) a competition authority of a Party is not required to furnish or allow access to information that is privileged or otherwise protected from disclosure.

[Article X.06: Cultural Industries]

[This Agreement does not apply to a measure adopted or maintained by a Party with respect to a person engaged in a cultural industry except as specifically provided in Article X (National Treatment and Market Access for Goods – Tariff Elimination).] [EC comment: this exception seems very broad. We understand it as allowing for example IPR infringement, discrimination or complete import or sales ban of foreign cultural products. Is this the intention? In any event, the clause should explicitly state that it is without prejudice to the parties' rights and obligations under the WTO]

Article X.07: World Trade Organization Waivers

If a right or obligation in this Agreement duplicates one under the WTO Agreement, the Parties agree that a measure adopted by a Party in conformity with a waiver decision adopted by the WTO pursuant to Article IX of the WTO Agreement is deemed to be also in conformity with the present Agreement. [Such conforming measure of either Party may not give rise to a claim by an investor of one Party against the other under Section B of Chapter Nine (Settlement of Disputes between an Investor and the Host Party).]

FINAL PROVISIONS

Article X.01: Annexes, Appendices and Footnotes

The Annexes, Appendices and footnotes to this Agreement constitute integral parts of this Agreement. *[EC: if used, add also "Protocols" and if so wished, binding "Joint Declarations"]*

Article X.02: Amendments

1. [The Agreement may be amended in writing by mutual consent of the Parties][EC: by means of a decision of the [institutional body]. The Parties may adopt the decision subject to their respective applicable legal requirements and procedures].
2. [An amendment enters into force following an exchange of written notifications by the Parties certifying the completion of their respective necessary legal procedures. The amendment enters into force on the date agreed upon by the Parties].*[EC comment: entry into force could be regulated in the decision referred above].*

Article X.03: Entry into Force

1. This Agreement shall be approved by each Party in accordance with its own procedures.
2. Each Party shall notify the other Party in writing of the completion of its legal procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the first day of the second month following the later notification of the completion of the procedures for the entry into force. The Parties may by mutual agreement fix another date.
- [3. Notifications shall be sent to the Secretary General of the Council of the European Union which will act as Depositary for the Agreement and to the [...] of Canada].
4. (a) This Agreement shall be provisionally applied from the first day of the month following the date on which the EU and Canada have notified each other of the completion of their respective relevant procedures. The Parties may by mutual agreement fix another date.

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(b) If a Party cannot provisionally apply certain provisions of this Agreement, it shall so notify the other Party. If the other Party objects to this notification, the Agreement shall not be provisionally applied. If the other Party does not object to this notification within 10 days, the provisions of this Agreement which have not been notified by either Party shall be provisionally applied by both Parties from the first day of the month following this notification, provided the Parties have exchanged notifications under sub-paragraph (a).

(c) The provisional application of the Agreement may be terminated by written notice of either Party. Such termination shall take effect on the first day of the second month following notification.

(d) If this Agreement, or certain provisions thereof, is provisionally applied, the term “entry into force of this Agreement” shall be understood to mean the date of provisional application. The [Trade Committee] and other bodies established by this Agreement may exercise their functions during the provisional application of the Agreement. If the provisional application of the Agreement is terminated under sub-paragraph (c), any decisions adopted in the exercise of these functions will cease to be effective.

(e) All notifications under this Article shall be made to the other Party [and to the Depositary].

Article X.04: Termination

This Agreement may be terminated by either Party by giving notice in writing [to the other Party and the Depositary]. It shall cease to be in force 6 months after the date of receipt of that notice.

Article X.05: Accession of new Member States of the European Union

1. The EU shall notify Canada of any request by a state for accession to the EU.
2. During the negotiations between the EU and the state seeking accession, the EU shall:
 - (a) provide, upon request of Canada, and to the extent possible, any information regarding any matter covered by this Agreement; and
 - (b) take into account any concerns expressed by Canada;
3. The EU shall notify Canada of the entry into force of any accession to the EU.
4. Sufficiently in advance of the date of accession of a state to the EU, the Trade Committee shall examine any effects of such accession on this Agreement. [The Trade Committee shall decide on any necessary adjustment or transition measures.] *Also linked with amendments and decisions.*

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[5. For matters within its competence, any new Member State of the EU shall accede to this Agreement from the date of its accession to the EU by means of a clause to that effect in the act of accession to the EU. If the act of accession to the EU does not provide for such automatic accession of the EU Member State to this Agreement, the EU Member State concerned shall accede to this agreement by depositing an act of accession to this agreement with the [depository]. *this paragraph depends on whether this agreement will include matters under Member States' competence*

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE in duplicate at _____, this _____ day of 20XX in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, and Swedish languages, each version being equally authentic.

For Canada

For the EU

INITIAL PROVISIONS AND GENERAL DEFINITIONS

Section A – General Definitions⁷⁹

[Article X.01: Definitions of General Application

For purposes of this Agreement, unless otherwise specified:

Commission means the Trade Commission established under Article X.01 (Administration of the Agreement);

Coordinators means the Agreement Coordinators established under Article X.02 (Administration of the Agreement);

customs duty includes a customs or import duty and a charge of any kind imposed on or in connection with the importation of a good, including a form of surtax or surcharge in connection with that importation, but does not include a:

- (a) charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994, in respect of like, directly competitive or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;
- (b) anti-dumping or countervailing duty that is applied pursuant to a Party's domestic law;
- (c) fee or other charge in connection with importation commensurate with the cost of services rendered; and
- (d) premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas or tariff preference levels;

⁷⁹ The Parties agree that in the course of the negotiations and legal review certain definitions may be moved to or from specific chapters. Finalization of the definitions is subject to the closing and review of outcomes at other tables.

Customs Valuation Agreement means the *WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*;

days means calendar days, including weekends and holidays;

enterprise means an entity constituted or organized under applicable law, whether or not for profit, and whether privately owned and controlled or governmentally owned and controlled, including a corporation, trust, partnership, sole proprietorship, joint venture or other association;

existing means in effect on the date of entry into force of this Agreement;

GATS means the *WTO General Agreement on Trade in Services*;

GATT 1994 means the *WTO General Agreement on Tariffs and Trade 1994*;

goods of a Party means domestic products as these are understood in the GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party;

Harmonized System (HS) means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, Chapter Notes and subheading notes;

heading means a four-digit number, or the first four digits of a number, used in the nomenclature of the Harmonized System;

measure includes a law, regulation, procedure, requirement or practice;

national means a natural person who is a citizen according to Article X.07, or is a permanent resident of a Party;

originating means qualifying under the rules of origin set out in Chapter X (Rules of Origin);

person means a natural person or an enterprise;

person of a Party means a national, or an enterprise of a Party;

preferential tariff treatment means the application of the respective duty rate under this Agreement to an originating good, pursuant to the tariff elimination schedule;

sanitary or phytosanitary measure means a measure referred to in Annex A, paragraph 1 of the *SPS Agreement*;

SPS Agreement means the *WTO Agreement on the Application of Sanitary and Phytosanitary Measures*;

state enterprise means an enterprise that is owned, or controlled through ownership interests, by a Party;

subheading means a six-digit number, or the first six digits of a number, used in the nomenclature of the Harmonized System;

tariff classification means the classification of a good or material under a chapter, heading or subheading of the Harmonized System;

tariff elimination schedule means Annex X.1;

TRIPS Agreement means the *WTO Agreement on Trade-Related Aspects of Intellectual Property Rights*;

WTO Agreement means the *Marrakesh Agreement Establishing the World Trade Organization*, done on 15 April 1994.] [joint comment: in principle all definitions affecting more than one chapter should be here, to be revised at later stage]

...

Article X-02: Country-specific Definitions

For purposes of this Agreement, unless otherwise specified:

citizen means, with respect to Canada, a natural person who is a citizen of Canada under Canadian legislation.

[national government means:

- (a) with respect to Canada, the Government of Canada; and
- (b) [with respect to the EC][not applicable to EC]

sub-national government means:

- (a) with respect to Canada, provincial, territorial, or local governments; and
- (b) [with respect to the EC][not applicable to EC]]

Joint comment: the issue of multi-layered governance to be re-discussed, including specific terminology to be used and whether general definition is needed here or could be addressed in specific chapters.

Geographical scope of application

Unless otherwise specified, this Treaty shall apply:

- (a) [with respect to Canada, (i) the land territory, air space, internal waters and territorial sea of Canada; (ii) the exclusive economic zone of Canada, as determined by its domestic law, consistent with Part V of the *United Nations Convention on the Law of the Sea* done on 10 December 1982 (UNCLOS); and (iii) the continental shelf of Canada, as determined by its domestic law, consistent with Part VI of UNCLOS]; [EU: subject to internal discussions]
- (b) [with respect to the EU, the territories in which the Treaty on the European Union and the Treaty on the Functioning of the European Union Treaty are applied and under the conditions laid down in those Treaties.]

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EU: do we need a clause linking this to territory, e.g. "References to "territory" in this Agreement shall be understood in this sense, unless explicitly stated otherwise"?

Joint comment: work intersessionally.

Section B – Initial Provisions

Article X.03: Establishment of the Free Trade Area

The Parties to this Agreement, consistent with Article XXIV of the GATT 1994 and Article V of the GATS, hereby establish a free trade area.

Article X.04: Relation to Other Agreements

1. The Parties affirm their rights and obligations with respect to each other under the WTO Agreement and other agreements to which the Parties are party.
2. [CDN: In the event of any inconsistency between this Agreement and the agreements referred to in paragraph 1, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.] [EC: prefers to rely on VCLT instead of having such a rule]
3. [Others to be determined.] EU: placeholder for reference to Framework Agreement.
4. [(a) Canada shall make its best efforts to start negotiations with those states:
 - (i) which have established a customs union with the EU [at the time of signature of this Agreement], and
 - (ii) whose products do not benefit from the tariff concessions under this Agreement, with a view to conclude a bilateral agreement establishing a free trade area in accordance with Article XXIV of the GATT].

Comment EC: The text of this paragraph will be replaced by a revised proposal currently under internal consultation.

(b) These negotiations shall start as soon as possible with a view to having the above-mentioned agreements concluded and in force as quickly as possible after the conclusion and the entry into force of this Agreement"].

Article X.05: Extent of Obligations

[CND: Each Party is fully responsible for the observance of all provisions of this Agreement and shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the sub-national governments and authorities within its territory.]

[EC: Each Party shall ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement, including their observance at all levels of government.]

[Article X.06: Relation to Environmental and Conservation Agreements]

In the event of an inconsistency between an obligation in this Agreement and an obligation of a Party under an agreement listed in Annex X, the latter obligation shall prevail provided that the measure taken is necessary to comply with that obligation, and is not applied in a manner that would constitute, where the same conditions prevail, arbitrary or unjustifiable discrimination or a disguised restriction on international trade.] [EC: for discussion and possible placement in environmental group]

Article X.07: Reference to Other Agreements

Where this Agreement refers to or incorporates by reference other agreements or legal instruments in whole or in part, such references include related footnotes, interpretative and explanatory notes. Except where the reference affirms existing rights, such reference also includes, as the case may be, successor agreements to which the Parties are party or amendments binding on the Parties. [EC: OK – have informed other leads. At a later date, will need to check that they are drafting accordingly.]

[Annex X.06: Multilateral Environmental Agreements]

- (a) The *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, done at Washington on 3 March 1973, as amended on 22 June 1979.
- (b) The *Montreal Protocol on Substances that Deplete the Ozone Layer*, done at Montreal on 16 September 1987, as amended 29 June 1990, as amended 25 November 1992, as amended 17 September 1997, as amended 3 December 1999.
- (c) The *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*, done at Basel on 22 March 1989.
- (d) The *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade*, done at Rotterdam on 10 September 1998.
- (e) The *Stockholm Convention on Persistent Organic Pollutants*, done at Stockholm on 22 May 2001.]

[EC: for discussion in group on sustainable development]

TRANSPARENCY

Section A- Publication, Notification and Administration of Laws

Article X.01: Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or made available in such a manner as to enable interested persons and the other Party to become acquainted with them.
2. To the extent possible, each Party shall:
 - (a) publish in advance any such measure that it proposes to adopt; and
 - (b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

Article X.02: Notification and Provision of Information

1. [To the extent possible, each Party shall notify the other Party of any proposed measure that the Party considers might materially affect the operation of this Agreement or substantially affect the other Party's interests under this Agreement.] [EC comment: this may create a lot of notifications – to be considered in light of other notification rules in other chapters]
2. To the extent possible, on request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any existing or proposed measure materially affecting the operation of this Agreement, whether or not the other Party has been previously notified of that measure.
3. A notification or information provided under this Article is without prejudice for the purposes of determining whether the measure is consistent with this Agreement.

Article X.03: Administrative Proceedings

In order to administer a measure of general application affecting matters covered by this Agreement, in a consistent, impartial and reasonable manner, each Party shall ensure that in its administrative proceedings applying measures referred to in Article X.01 (Publication) to particular persons, goods or services of the other Party in specific cases:

- (a) whenever possible, a person of the other Party who is directly affected by a proceeding is given reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of the issues in controversy;
- (b) a person referred to in subparagraph (a) is afforded a reasonable opportunity to present facts and arguments in support of its position prior to any final administrative action, when permitted by time, the nature of the proceeding, and the public interest; and,
- (c) its procedures are in accordance with its domestic law.

Article X.04: Review and Appeal

1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Each Party shall ensure that its tribunals are impartial and independent of the office or authority entrusted with administrative enforcement and that they do not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in its tribunals or procedures, the parties to the proceeding are provided with the right to:

- (a) a reasonable opportunity to support or defend their respective positions; and

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- (b) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions are implemented by, and govern the practice of, the offices or authorities with respect to the administrative action at issue.

Article X.05: Cooperation on Promoting Increased Transparency

The Parties agree to cooperate in bilateral, regional and multilateral fora on ways to promote transparency in respect of international trade and investment.

Article X-6: Definitions

For purposes of this Section:

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

- (a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of the other Party in a specific case; or
- (b) a ruling that adjudicates with respect to a particular act or practice.

CHAPTER 14

DISPUTE SETTLEMENT

SECTION 1

GENERAL PROVISIONS

ARTICLE 14.1: COOPERATION

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

ARTICLE 14.2: SCOPE

[Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply with respect to the settlement of all disputes between the Parties regarding the interpretation or application of this Agreement or wherever a Party considers that

1. an actual [or proposed: EC is to consider] measure of the other Party is [or would be] inconsistent with the obligations of this Agreement; [EC: prefers to limit to actual measures EC may consider consultations only on proposed measures. Canada to propose drafting to this effect.]
2. the other Party has otherwise failed to carry out an obligation under this Agreement.]

[EC proposal: This Chapter applies to any dispute concerning the interpretation and application of the provisions of this Agreement unless otherwise [EC: expressly] provided].

[Canada is to reflect on non-violation complaints at consultation stage only. EC is to reflect on including this type of complaint beyond consultations.]

ARTICLE 14.3: CHOICE OF FORUM

1. Recourse to the dispute settlement provisions of this Chapter shall be without prejudice to any action in the WTO framework, including dispute settlement action.

[Canada:

2. In any dispute referred to in paragraph 1, if the responding Party claims that the dispute is subject to Article [X – Multilateral Environmental Agreements] and requests in writing that the dispute be considered under this Agreement, the requesting Party, in respect of that matter, may have recourse to dispute settlement procedures only under this Agreement.]

- 2 [bis]. Notwithstanding paragraph 1, if a Party has, with regard to a particular measure, instituted a dispute settlement proceeding, either under this Chapter or

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under the WTO Agreement, it may not institute a dispute settlement proceeding regarding the same measure in the other forum until the first proceeding has ended. In addition, a Party shall not seek redress for the breach of an obligation which is equivalent in substance under the [CETA] and under the WTO Agreement in the two forums. In such case, once a dispute settlement proceeding has been initiated, the Party shall not bring a claim seeking redress for the breach of the substantially equivalent obligation under the other agreement to the other forum, unless the forum selected fails, for procedural or jurisdictional reasons other than termination under paragraph XX (b) of Annex I, to make findings on that claim.

3. For the purposes of paragraph 2 [bis]:

(a) dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes contained in Annex 2 of the WTO Agreement (hereinafter referred to as the "DSU") and are deemed to be concluded when the DSB adopts the Panel's report, and the Appellate Body's report as the case may be, under Articles 16 and 17.14 of the DSU; and

(b) dispute settlement proceedings under this Chapter are deemed to be initiated by a Party's request for the establishment of an arbitration panel under Article 14.4.1 and are deemed to be concluded when the arbitration panel issues its ruling to the Parties and to the Trade Committee under Article 14.7.

4. Nothing in this Agreement shall preclude a Party from implementing the suspension of obligations authorised by the DSB. A Party may not invoke the WTO Agreement to preclude the other Party from suspending obligations under this Chapter.

SECTION 2 CONSULTATIONS AND MEDIATION

ARTICLE 14.4: CONSULTATIONS

1. A Party may request in writing consultations with the other Party regarding any matter referred to in Article 14.2.
2. The requesting Party shall transmit the request to the responding Party, and shall set out the reasons for the request, including the identification of the specific measure or other matter at issue under Article 14.2 and an indication of the legal basis for the complaint.
3. Subject to paragraph 4, the disputing Parties shall enter into consultations within 30 days of the date of receipt of the request by the responding Party. Consultations shall take place in the territory of the responding Party, unless the Parties agree otherwise.
4. In cases of urgency, including those involving perishable or seasonal goods or services that rapidly lose their trade value, consultations shall commence within 15 days of the date of receipt of the request by the responding Party.

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5. The disputing Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter through consultations. To this end, each disputing Party shall:
 - a. provide sufficient information to enable a full examination of the matter at issue;
 - b. protect any confidential or proprietary information exchanged in the course of consultations as requested by the Party providing the information; and
 - c. make available the personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to the consultations.
6. Consultations are confidential and without prejudice to the rights of the disputing Parties in proceedings under this Chapter.
7. Consultations may be held in person or by any other means agreed to by the disputing Parties.

ARTICLE 14.4bis MEDIATION

The Parties may have recourse to mediation, as set out in Annex III.

Note: will renumber the chapter after agreement on provisions on compliance phase

SECTION 3 DISPUTE SETTLEMENT PROCEDURES

SUB-SECTION 1 – DISPUTE SETTLEMENT PROCEDURES

ARTICLE 14.5: INITIATION OF THE DISPUTE SETTLEMENT PROCEDURE

1. Unless the disputing Parties agree otherwise, if a matter referred to in Article 14.4 has not been resolved within:
 - a. 45 days of the date of receipt of the request for consultations; or
 - b. 25 days of the date of receipt of the request for consultations for matters referred to in Article 14.4(4);the requesting Party may refer the matter to a dispute settlement panel by providing written notice to the responding Party.
2. In the notice referred to in sub-paragraph 1, the requesting Party shall identify the specific measure [or other matter at issue] and [CDN: provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly.] [EC: it shall explain how such measure constitutes a breach of the provisions referred to in Article 2.]

ARTICLE 14.6: COMPOSITION OF THE DISPUTE SETTLEMENT PANEL

1. The panel shall comprise three individuals.
2. The Parties shall consult with a view to reaching an agreement on the composition of the arbitration panel within 10 working days of the date of

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receipt by the responding Party of the request for the establishment of an arbitration panel.

3. In the event that the Parties are unable to agree on the composition of the arbitration panel within the time frame laid down in paragraph 2, either Party may request the Chair of the [CETA institutional body], or the Chair's delegate, to draw by lot the members of the arbitration panel from the list established under [Article 14.6bis]. One member shall be drawn from sub-list of individuals proposed by the complaining Party, one from the sub-list of individuals proposed by the responding Party and one from the sub-list of individuals proposed by the Parties to act as chairperson. If the Parties have agreed on one or more of the members of the arbitration panel, any remaining members shall be selected by the same procedure in the applicable sub-list of panellists. If the Parties have agreed on a member of the arbitration panel, other than the chairperson, who is not a national of either Party, the chairperson and other member shall be selected from the sub-list of proposed chairpersons.

4. The Chair of the [CETA institutional body], or the Chair's delegate, shall select the arbitrators as soon as possible and normally within five working days of the request referred to in paragraph 3 by either Party. The Chair, or the Chair's delegate, shall give a reasonable opportunity to representatives of each Party to be present when lots are drawn.

5. The date of establishment of the arbitration panel shall be the date on which the last of the three arbitrators is selected.

6. Should the list provided for in Article [14.6bis] not be **-or not contain sufficient names** at the time a request is made pursuant to paragraph 3 the three arbitrators shall be drawn by lot from the individuals who have been proposed by one or both of the Parties in accordance with paragraph 1 of Article [14.6bis] [list of arbitrators].

7. Replacement of arbitrators shall take place only for the reasons and according to the procedures detailed in [rules 18 to 22] of the Rules of Procedure.]

ARTICLE 14.6bis – Lists of arbitrators

1. The [CETA institutional body] shall, at its first meeting after the entry into force of this Agreement, establish a list of at least 15 individuals, chosen on the basis of objectivity, reliability and sound judgment, who are willing and able to serve as arbitrators. Each Party shall propose at least five individuals to serve as arbitrators. The Parties shall also select at least five individuals who are not nationals of either Party to act as chairpersons. The [CETA institutional body] may review the list at any time and shall ensure that the list conforms with this article/paragraph.

Note: will renumber these articles after agreement on compliance phase

2. The arbitrators must have specialised knowledge of international trade law. The individuals acting as chairpersons must also have experience as counsel or panelist in dispute settlement proceedings on subject matters within the scope of this Chapter. Arbitrators shall be independent, serve in their individual capacities and not take instructions from any

organisation or government, or be affiliated with the government of any of the Parties, and shall comply with the Code of Conduct annexed to this Chapter.

ARTICLE 14.7: INTERIM PANEL REPORT

1. The panel shall present to the disputing Parties an interim report within [150] days after the last panel member is appointed. The report shall contain:
 - a. findings of fact;
 - b. determinations as to whether the responding Party has conformed with its obligations under this Agreement [and any other finding or determination requested in the terms of reference]; and
 - c. [recommendations for resolution of the dispute, including determining the level of compensation equivalent to the value of trade loss suffered by the requesting Party.]
2. Each Party may submit written comments to the panel on the interim report, subject to any time limits set by the panel. After considering any such comments, the panel may:
 - a. reconsider its report; or
 - b. make any further examination that it considers appropriate.
3. Notwithstanding any other provision of this Chapter, the interim report of the panel shall be confidential.

ARTICLE 14.8: FINAL PANEL REPORT

1. Unless the disputing Parties agree otherwise, the panel shall issue a report in accordance with the provisions of this Chapter. The ruling shall set out the findings of fact, the applicability of the relevant provisions of this Agreement and the basic rationale behind any findings and conclusions that it makes. The ruling of the arbitration panel shall be binding on the Parties.
2. The panel shall present to the Parties a final report within 30 days of presentation of the interim report.
3. Each Party shall make publicly available the final report of the panel after it is presented to the disputing Parties, subject to [rule [36](confidentiality)].
4. In cases of urgency, including those involving perishable or seasonal goods or services that rapidly lose their trade value, the arbitration panel and the parties shall make every effort to accelerate the proceedings to the greatest extent possible. The Panel shall aim at presenting an interim report to the parties within [75] days after the last panel member is appointed, and a final report within [15] days of the presentation of the interim report. Upon request of a party, the arbitration panel shall make a preliminary ruling within 10 days of the request on whether it deems the case to be urgent.
5. The panel shall interpret the provisions referred to in Article 14.2 in accordance with customary rules of interpretation of public international law, including those set out in the *Vienna Convention on the Law of Treaties*. The panel shall also take

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into account relevant interpretations in reports of Panels and the Appellate Body adopted by the WTO DSB. The rulings of the arbitration panel cannot add to or diminish the rights and obligations provided for in the provisions referred to in Article 14.2.

SUB-SECTION 2: COMPLIANCE

ARTICLE 14.9: COMPLIANCE WITH THE PANEL RULING

1. [On receipt of the final report of a panel, the disputing Parties shall agree on the resolution of the dispute. Unless otherwise agreed by the disputing Parties the resolution shall be in conformity with the determinations and any recommendations of the panel.
2. Wherever possible, the resolution shall be:
 - a. removal of a measure [or other matter] found by the panel to be inconsistent with an obligation in this Agreement; or
 - b. removal of the nullification or impairment.
3. If the disputing Parties are unable to agree on a resolution within 30 days of presentation of the final report, or such other period of time as the disputing Parties may agree, the responding Party shall, [if so requested by the requesting Party,] [pay compensation to the requesting Party in accordance with Article 14.10].]

ARTICLE 14.10: TEMPORARY REMEDIES IN CASE OF NON-COMPLIANCE

[EC notes on Articles 14.9 and 14.10 that an alternative approach would be a reasonable period of time to comply, failing which the requesting Party may suspend concessions after a compliance panel review]

Further discussion to take place on this subject.

ARTICLE 14.11: REVIEW OF ANY MEASURE TAKEN TO COMPLY WITH THE PANEL RULING

1. [A disputing Party may] [The complaining Party shall], by written notice to the other Party, request that a panel be reconvened to make a determination with respect to any disagreement as to the existence or consistency with this Agreement, subject to Article 14.2, of a measure taken to comply with the determination or recommendations of the panel.
2. In the written notice of the request referred to in sub-paragraph 1, the Party shall identify the specific measure or matter at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly.
3. The panel shall be reconvened either:

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- a. upon receipt by the other Party of a written notice referred to in sub-paragraph 1; or
 - b. in the event that any original panel member is unable to serve on the panel, on the date on which a replacement member is appointed in accordance with the provisions of Article 14.5.
4. The provisions of Article 14.6, 14.7 and 14.11 apply to the procedures adopted and reports issued by the panel reconvened under this Article, with the exception that the panel shall:
- a. present a final report within [90] days of being reconvened; and
 - b. present an interim report 15 days prior to presenting a final report.
5. A panel reconvened under this Article may include in its final report a recommendation, where appropriate, [that any compensation be terminated or that the amount of compensation be modified] [alternative approach is the termination of the sanctions where suspension of concessions is provided for].

EC PROPOSAL ON COMPLIANCE

ARTICLE 9

Compliance with the arbitration panel ruling

Each Party shall take any measure necessary to comply with the arbitration panel ruling, and the Parties shall endeavour to agree on the period of time to comply with the ruling.

ARTICLE 10

The reasonable period of time for compliance

1. No later than 30 days after the receipt of the notification of the arbitration panel ruling by the Parties, the responding Party shall notify the complaining Party and the [institutional body] of the time it will require for compliance (reasonable period of time), if immediate compliance is not possible.
2. In the event of disagreement between the Parties on the reasonable period of time with which to comply with the arbitration panel ruling, the complaining Party shall, within 20 days of the receipt of the notification made under paragraph 1 by the responding Party, request in writing the arbitration panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the other Party and to the [institutional body]. The arbitration panel shall notify its ruling to the Parties and to the [institutional body] within 30 days from the date of submission of the request.
3. The reasonable period of time may be extended by mutual agreement of the Parties.

ARTICLE 11

Review of any measure taken to comply with the arbitration panel ruling

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1. The responding Party shall notify the other Party and the [institutional body] before the end of the reasonable period of time of any measure that it has taken to comply with the arbitration panel ruling.

2. In the event of disagreement between the Parties concerning the existence of any measure notified under paragraph 1 or its consistency with the provisions referred to in Article 2, the complaining Party may request in writing the arbitration panel to rule on the matter. Such request shall identify the specific measure at issue and shall explain how such measure is inconsistent with the provisions referred to in Article 2. The arbitration panel shall notify its ruling within 90 days of the date of submission of the request. In cases of urgency, including those involving perishable or seasonal goods, the arbitration panel shall notify its ruling within 45 days of the date of submission of the request.

ARTICLE 12

Temporary remedies in case of non-compliance

1. If the responding Party fails to notify any measure taken to comply with the arbitration panel ruling before the expiry of the reasonable period of time, or if the arbitration panel rules that the measure notified under Article 11(1) is inconsistent with that Party's obligations under the provisions referred to in Article 2, the responding Party shall, if so requested by the complaining Party, present an offer for temporary compensation.

2. If no agreement on compensation is reached within 30 days of the end of the reasonable period of time or of notification of the arbitration panel ruling under Article 11 that the measure taken to comply is inconsistent with the provisions referred to in Article 2, the complaining Party shall be entitled, upon notification to the other Party and to the [institutional body], to suspend obligations arising from any provision referred to in Article 2 at a level equivalent to the nullification or impairment caused by the violation. The complaining Party may implement the suspension 10 working days after the date of receipt of the notification by the responding Party, unless the responding Party has requested arbitration under paragraph 3.

3. If the responding Party considers that the level of suspension is not equivalent to the nullification or impairment caused by the violation, it may request in writing the arbitration panel to rule on the matter. Such request shall be notified to the other Party and to the [institutional body] before the expiry of the 10-working-day period referred to in paragraph 2. The arbitration panel, having sought, if appropriate, the opinion of experts, shall notify its ruling on the level of the suspension of obligations to the Parties and to the [institutional body] within 30 days of the date of submission of the request. Obligations shall not be suspended until the arbitration panel has delivered its ruling, and any suspension shall be consistent with the arbitration panel ruling.

4. The suspension of obligations shall be temporary and shall be applied only until any measure found to be inconsistent with the provisions referred to in Article 2 has been withdrawn or amended so as to bring it into conformity with those provisions, as established under Article 13, or until the Parties have settled the dispute.

ARTICLE 13

Review of any measure taken to comply after the suspension of obligations

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1. The responding Party shall notify the other Party and the [institutional body] of any measure it has taken to comply with the ruling of the arbitration panel and of its request for an end to the suspension of obligations applied by the complaining Party.
2. If the Parties do not reach an agreement on the compatibility of the notified measure with the provisions referred to in Article 2 within 30 days of the date of receipt of the notification, the complaining Party shall request in writing the arbitration panel to rule on the matter. Such request shall be notified simultaneously to the other Party and to the [institutional body]. The arbitration panel ruling shall be notified to the Parties and to the [institutional body] within 45 days of the date of submission of the request. If the arbitration panel rules that any measure taken to comply is in conformity with the provisions referred to in Article 2, the suspension of obligations shall be terminated.

ARTICLE 14.12: RULES OF PROCEDURE

Dispute settlement procedures under this Chapter shall be governed by the Rules of Procedure annexed to this Agreement, unless the Parties agree otherwise.

ARTICLE 14.15: PRIVATE RIGHTS

1. Nothing in this Agreement shall be construed as conferring rights or imposing obligations on persons other than those created between the Parties under public international law, nor as permitting this Agreement to be directly invoked in the domestic legal systems of the Parties.
2. No Party may provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

[EC proposal:

Article 14.10 *bis*

This Chapter may be invoked in respect of measures affecting the observance of this Agreement taken at a level of government other than the central level. When [a panel] has ruled that any such measure is inconsistent with this Agreement [as set out in Article X], the responding Party shall take all necessary measures to ensure that the measure at issue is brought into compliance with the provisions of this Agreement. The provisions of this Chapter relating to compensation and suspension of concessions or other obligations [reference] apply in cases where it has not been possible to secure such compliance.]

ARTICLE 14.XX – MUTUALLY AGREED SOLUTIONS

The Parties may reach a mutually agreed solution to a dispute under this Chapter at any time. They shall notify the [institutional body] and the arbitration panel of any such solution. Upon notification of the mutually agreed solution, the arbitration panel shall terminate its work and the procedure shall be terminated.

RULES OF PROCEDURE AND CODE OF CONDUCT

ANNEX I

**RULES OF PROCEDURE
FOR ARBITRATION**

GENERAL PROVISIONS

1. In [Chapter X (Dispute Settlement)] and under these rules:

“adviser” means a person retained by a Party to advise or assist that Party in connection with the arbitration panel proceeding;

"member" or “arbitrator” means a member of an arbitration panel established under Article [5] of [Chapter X (Dispute Settlement)];

“assistant” means a person who, under the terms of appointment of an arbitrator conducts research for or provides assistance to the member;

“complaining Party” means any Party that requests the establishment of an arbitration panel under Article [5] of [Chapter X (Dispute Settlement)];

“responding Party” means the Party that is alleged to be in violation of the provisions referred to in Article [2] of [Chapter X (Dispute Settlement)];

“arbitration panel” means a panel established under Article [6] of [Chapter X (Dispute Settlement)]; *[joint comment: we may revise terminology on panel and panelists at a later stage]*

“representative of a Party” means an employee or any person appointed by a government department or agency or any other public entity of a Party who represents the Party for the purposes of a dispute under this Agreement;

“day” means a calendar day, unless otherwise specified;

“legal holiday” means every Saturday and Sunday and any other day designated by a Party as a holiday for the purposes of these rules.

2. The responding Party shall be in charge of the logistical administration of dispute settlement proceedings, in particular the organisation of hearings, unless otherwise agreed. However, the Parties shall bear equally the administrative expenses of the dispute settlement proceedings as well as the remuneration and all travel, lodging and general expenses of the panellists and their assistants.

NOTIFICATIONS

3. Unless agreed otherwise, the Parties and the arbitration panel shall transmit any request, notice, written submission or other document by e-mail, with a copy submitted on the same day by facsimile transmission, registered post, courier, delivery against receipt or any other means of telecommunication that provides a record of its sending. Unless proven otherwise, an e-mail message shall be deemed to be received on the same date of its sending.

4. When communicating in writing, a Party shall provide an electronic copy of its communications to the other Party and to each of the arbitrators.

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5. Before the entry into force of this Agreement, each Party shall inform the other of its designated point of contact for all notifications.
6. Minor errors of a clerical nature in any request, notice, written submission or other document related to the arbitration panel proceeding may be corrected by delivery of a new document clearly indicating the changes.
7. If the last day for delivery of a document falls on an official holiday or rest day in Canada or in the Union, the document may be delivered on the next business day. No documents, notifications or requests of any kind shall be deemed to be received on a legal holiday.
8. [Depending on the object of the provisions under dispute, all requests and notifications addressed to the [institutional body to be defined] in accordance with [Chapter X (Dispute Settlement)] shall also be copied to the other relevant [institutional bodies]] *[EU comment: depending on the institutional set up of the agreement and of the chapter].*

COMMENCING THE ARBITRATION

9. Unless the Parties agree otherwise, they shall meet the arbitration panel within seven working days of its establishment in order to determine such matters that the Parties or the arbitration panel deem appropriate, including the remuneration and expenses to be paid to the arbitrators, which shall be in accordance with WTO standards. Remuneration for each arbitrator's assistant shall not exceed 50% of the total remuneration of that arbitrator. Members of the arbitration panel and representatives of the Parties may take part in this meeting via telephone or video conference. *[comment: Canada will try to get an official document with the rates from WTO secretariat]*

10. (a) Unless the Parties agree otherwise, within five working days of the date of the selection of the arbitrators, the terms of reference of the arbitration panel shall be:
"to examine, in the light of the relevant provisions of the Agreement, the matter referred to in the request for establishment of the arbitration panel, to rule on the compatibility of the measure in question with the provisions referred to in Article 2 of [Chapter X (Dispute Settlement)] and to make a ruling in accordance with Article 8 of [Chapter X (Dispute Settlement)]."

Comment Canada: "compatibility" may pose problems with NV N&I claims – EU: we prefer to have only violation claims – to be discussed under the article on scope.

Comment (October): Agreement to have terms of reference here – will examine precise language later.

[If a disputing Party requests the Panel to make findings regarding the degree of adverse trade effects of any measure found not to conform to the obligations of the Agreement, the terms of reference shall so indicate.]

[comment: relates to compliance proceedings – to be addressed in light of solution on that issue]

(b) The Parties shall notify the agreed terms of reference to the arbitration panel within three working days of their agreement.

(c) The panel may rule on its own jurisdiction.

INITIAL SUBMISSIONS

11. The complaining Party shall deliver its initial written submission no later than 10 days after the date of establishment of the arbitration panel. The responding Party shall deliver its written counter-submission no later than 21 days after the date of delivery of the initial written submission.

WORKING OF ARBITRATION PANELS

12. The chairperson of the arbitration panel shall preside at all its meetings. An arbitration panel may delegate to the chairperson authority to make administrative and procedural decisions.

13. Hearings shall take place in person. Unless otherwise provided in [Chapter X (Dispute Settlement)] and without prejudice to paragraph 31, the arbitration panel may conduct its other activities by any means, including telephone, facsimile transmissions or computer links.

14. Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may permit its assistants to be present at its deliberations.

15. The drafting of any ruling shall remain the exclusive responsibility of the arbitration panel and must not be delegated.

16. Findings, determinations and recommendations of the panel under Articles [14.7] and [14.8] should be made by consensus, but if consensus is not possible then by a majority of its members.

17. Panel members may not furnish separate opinions on matters not unanimously agreed.

18. Where a procedural question arises that is not covered by the provisions of [Chapter X (Dispute Settlement)] and its annexes, the arbitration panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions and that ensures equal treatment between the Parties.

19. When the arbitration panel considers that there is a need to modify any time-limit applicable in the proceedings or to make any other procedural or administrative adjustment as may be required for the fairness or efficiency of the proceedings, it shall inform the Parties in writing of the reasons for the modification or adjustment and of the period or adjustment needed. The arbitration panel may adopt such modification or adjustment after having consulted the Parties.

20. Any time-limit referred to in this chapter may be modified by mutual agreement of the Parties. Upon request of a Party, the arbitration panel may modify the time-limits applicable in the proceedings.

21. The panel shall suspend its work:

- a) at the request of the complaining Party for a period specified in the request but not to exceed 12 consecutive months, and shall resume its work at the request of the complaining Party;
- b) after it has issued its interim report, only upon the request of both Parties, for a period specified in the request, and shall resume its work at the request of either Party.

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If there is no request for the resumption of the panel's work by the end of the period specified in the request for suspension, the procedure shall be terminated. The termination of the panel's work is without prejudice to the rights of either Party in another proceeding on the same matter under this Chapter.

[Who may suspend and request resumption of panel to be reassessed upon completion of the compliance and post-retaliation procedures.]

REPLACEMENT

22. If an arbitrator is unable to participate in the proceeding, withdraws, or must be replaced, a replacement shall be selected in accordance with [Article 6 paragraph 3] of [Chapter X (Dispute Settlement)].

23. Where a Party considers that an arbitrator does not comply with the requirements of the Code of Conduct and for this reason must be replaced, that Party shall notify the other Party within 15 days from the time at which it came to know of the circumstances underlying the arbitrator's material violation of the Code of Conduct.

24. Where a Party considers that an arbitrator other than the chairperson does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they so agree, replace the arbitrator and select a replacement following the procedure set out in [Article 6 paragraph 3] of [Chapter X (Dispute Settlement)].

If the Parties fail to agree on the need to replace an arbitrator, any Party may request that such matter be referred to the chairperson of the arbitration panel, whose decision shall be final.

If, pursuant to such a request, the chairperson finds that an arbitrator does not comply with the requirements of the Code of Conduct, she or he shall draw a new arbitrator by lot from the names on the list referred to in [Article 14.6bis(1)] of [Chapter X (Dispute Settlement)] and on which the original arbitrator was included. If the original arbitrator was chosen by the Parties pursuant to [Article 6] of [Chapter X (Dispute Settlement)], the replacement shall be drawn by lot from the individuals proposed by the complaining Party and by the responding Party under [Article 14.6bis(1)] of this Protocol. The selection of the new arbitrator shall be made within five working days of the date of the submission of the request to the chairperson of the arbitration panel.

25. Where a Party considers that the chairperson of the arbitration panel does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they so agree, shall dismiss the chairperson and select a replacement following the procedure set out in [Article 6 paragraph 3] of [Chapter X (Dispute Settlement)].

If the Parties fail to agree on the need to replace the chairperson, any Party may request that such matter be referred to the two remaining members of the arbitration panel. The decision by these persons on the need to replace the chairperson shall be final.

If these persons decide that the original chairperson does not comply with the requirements of the Code of Conduct, they shall draw a new chairperson by lot among the remaining names on the list referred to in [Article 14.6bis(1)] of this

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Protocol to act as chairperson. The selection of the new chairperson shall be made within five working days of the date of the submission of the request referred to in this paragraph.

If these persons cannot reach a decision within 10 days of the matter being referred to them, the procedures set out in [Article 6] of Chapter XX (Dispute Settlement) shall apply. *[drafting can be improved]*

26. The arbitration panel proceedings shall be suspended for the period taken to carry out the procedures provided for in rules 22, 23, 24 and 25.

HEARINGS

27. The chairperson shall fix the date and time of the hearing in consultation with the Parties and the other members of the arbitration panel, and confirm this in writing to the Parties. This information shall also be made publicly available by the Party in charge of the logistical administration of the proceedings, subject to rule 40 (confidentiality).

28. Unless the Parties agree otherwise, the hearing shall be held in Brussels if the complaining Party is Canada and in Ottawa if the complaining Party is the Union.

29. As a general rule there should be only one hearing. The panel may on its own initiative or on the request of a Party convene one additional hearing when the dispute involves issues of exceptional complexity. No additional hearing shall be convened for the procedures established under [...*compliance proceedings*].

30. All arbitrators shall be present during the entirety of the hearing.

31. The following persons may attend the hearing, irrespective of whether the proceedings are open to the public or not:

- (a) representatives of the Parties;
- (b) advisers to the Parties;
- (c) administrative staff, interpreters, translators and court reporters; and
- (d) arbitrators' assistants.

Only the representatives of and advisers to the Parties may address the arbitration panel.

32. No later than five working days before the date of a hearing, each Party shall deliver to the arbitration panel and to the other Party a list of the names of persons who will make oral arguments or presentations at the hearing on behalf of that Party and of other representatives or advisers who will be attending the hearing.

33. The arbitration panel shall conduct the hearing in the following manner, ensuring that the complaining Party and the responding Party are afforded equal time:

Argument

- (a) argument of the complaining Party
- (b) argument of the responding Party

Rebuttal Argument

- (a) argument of the complaining Party
- (b) counter-reply of the responding Party

34. The arbitration panel may direct questions to either Party at any time during the hearing.
35. The arbitration panel, after having received the comments of the Parties, shall issue to the parties a final transcript of each hearing.
36. Each Party may deliver to the arbitrators and to the other Party a supplementary written submission concerning any matter that arose during the hearing within 10 working days of the date of the hearing.

QUESTIONS IN WRITING

37. The arbitration panel may at any time during the proceedings address questions in writing to one or both Parties. Each of the Parties shall receive a copy of any questions put by the arbitration panel.
38. Each Party shall also provide the other Party with a copy of its written response to the questions of the arbitration panel. Each Party shall be given the opportunity to provide written comments on the other Party's reply within five working days of the date of receipt.

TRANSPARENCY AND CONFIDENTIALITY

39. Subject to paragraph [40], each party shall make its submissions publicly available and, unless the Parties decide otherwise, the hearings of the arbitration panel shall be open to the public.
40. The arbitration panel shall meet in closed session when the submission and arguments of a Party contain confidential business information. The Parties shall maintain the confidentiality of the arbitration panel hearings where the hearings are held in closed session. Each Party and its advisers shall treat as confidential any information submitted by the other Party to the arbitration panel which that Party has designated as confidential. Where a Party's submission to the arbitration panel contains confidential information, that Party shall also provide, within 15 days, a non-confidential version of the submission that could be disclosed to the public.

EX PARTE CONTACTS

41. The arbitration panel shall not meet or contact a Party in the absence of the other Party.
42. No member of the arbitration panel may discuss any aspect of the subject matter of the proceedings with a Party or the Parties in the absence of the other arbitrators.

INFORMATION AND TECHNICAL ADVICE

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43. On request of a disputing Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, subject to any terms and conditions agreed by the Parties. Any information obtained in this manner must be disclosed to each Party and submitted for their comments.

AMICUS CURIAE SUBMISSIONS

44. Non-governmental persons established in a Party may submit amicus curiae briefs to the arbitration panel in accordance with the following paragraphs.
45. Unless the Parties agree otherwise within five days of the date of the establishment of the arbitration panel, the arbitration panel may receive unsolicited written submissions, provided that they are made within 10 days of the date of the [establishment] of the arbitration panel, and in no case longer than 15 typed pages, including any annexes, and that they are directly relevant to the issue under consideration by the arbitration panel.
46. The submission shall contain a description of the person making the submission, whether natural or legal, including the nature of that person's activities and the source of that person's financing, and specify the nature of the interest that that person has in the arbitration proceeding. It shall be drafted in the languages chosen by the Parties in accordance with Rules 49 and 50 of these Rules of Procedure.
47. The arbitration panel shall list in its ruling all the submissions it has received that conform to the above rules. The arbitration panel shall not be obliged to address in its ruling the arguments made in such submissions. The arbitration panel shall submit to the Parties for their comments any submission it obtains under this rule.

URGENT CASES

48. In cases of urgency referred to in [Chapter X (Dispute Settlement)], the arbitration panel, after consulting the Parties, shall adjust the time limits referred to in these rules as appropriate and shall notify the Parties of such adjustments.

TRANSLATION AND INTERPRETATION

49. During the consultations referred to in [Article 6.2] of [Chapter X (Dispute Settlement)], and no later than the meeting referred to in Rule 9 of these Rules of Procedure, the Parties shall endeavour to agree on a common working language for the proceedings before the arbitration panel.
50. If the Parties are unable to agree on a common working language, each Party shall arrange for and bear the costs of the translation of its written submissions into the language chosen by the other Party. The responding Party shall arrange for the interpretation of oral submissions into the languages chosen by the Parties.
51. Arbitration panel rulings shall be issued in the language or languages chosen by the Parties.
52. Any costs incurred for translation of an arbitration ruling into the language or languages chose by the Parties shall be borne equally by the Parties.
53. A Party may provide comments on the accuracy of the translation of any translated version of a document drawn up in accordance with these rules.

CALCULATION OF TIME-LIMITS

54. All time-limits laid down in this chapter including the limits for the arbitration panels to notify their rulings, shall be counted in calendar days from the day following the act or fact to which they refer, unless otherwise specified.

55. Where, by reason of the application of rule 7 of these Rules of Procedure, a Party receives a document on a date other than the date on which this document is received by the other Party, any period of time that is calculated on the basis of the date of receipt of that document shall be calculated from the last date of receipt of that document.

OTHER PROCEDURES

56. These Rules of Procedure are also applicable to procedures established under [*compliance proceedings*]. However, the time-limits laid down in these Rules of Procedure shall be adjusted in line with the special time-limits provided for the adoption of a ruling by the arbitration panel in those other procedures.

57. In the event of the original panel, or some of its members, being unable to reconvene for the procedures established under [*compliance proceedings*], the procedures set out in [Article 6] of [Chapter X (Dispute Settlement)] shall apply. The time limit for the notification of the ruling shall be extended by 15 days.

ANNEX II

CODE OF CONDUCT FOR MEMBERS OF ARBITRATION PANELS AND MEDIATORS DEFINITIONS

1. In this Code of Conduct:

(a) "member" or "arbitrator" means a member of an arbitration panel effectively established under [Article 6] of [Chapter X (Dispute Settlement)];

[(b) "mediator" means a person who conducts a mediation in accordance with [Article 4] of [Chapter X (Dispute Settlement)];]

(c) "candidate" means an individual whose name is on the list of arbitrators referred to in Article [14.6bis] of [Chapter X (Dispute Settlement)] and who is under consideration for selection as a member of an arbitration panel under Article 6 of [Chapter X (Dispute Settlement)];

(d) "assistant" means a person who, under the terms of appointment of a member, conducts, researches or provides assistance to the member;

(e) "proceeding", unless otherwise specified, means an arbitration panel proceeding under [Chapter X (Dispute Settlement)];

(f) "staff", in respect of a member, means persons under the direction and control of the member, other than assistants.

RESPONSIBILITIES TO THE PROCESS

2. Every candidate and member shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement mechanism is preserved. Former members must comply with the obligations established in paragraphs 16, 17, 18 and 19 of this Code of Conduct.

DISCLOSURE OBLIGATIONS

3. Prior to confirmation of her or his selection as a member of the arbitration panel under [Chapter X (Dispute Settlement)], a candidate shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

4. Without limiting the generality of the foregoing, candidates shall disclose the following interests, relationships and matters:

- (1) any financial interest of the candidate:
 - (a) in the proceeding or in its outcome, and

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- (b) in an administrative proceeding, a domestic court proceeding or another panel or committee proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;
- (2) any financial interest of the candidate's employer, partner, business associate or family member
 - (a) in the proceeding or in its outcome, and
 - (b) in an administrative proceeding, a domestic court proceeding or another panel or committee proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;
- (3) any past or existing financial, business, professional, family or social relationship with any interested parties in the proceeding, or their counsel, or any such relationship involving a candidate's employer, partner, business associate or family member; and
- (4) public advocacy or legal or other representation concerning an issue in dispute in the proceeding or involving the same goods.

5. A candidate or member shall communicate matters concerning actual or potential violations of this Code of Conduct only to the [institutional body to be defined] for consideration by the Parties.

6. Once selected, a member shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in paragraph 3 of this Code of Conduct and shall disclose them. The disclosure obligation is a continuing duty which requires a member to disclose any such interests, relationships or matters that may arise during any stage of the proceeding. The member shall disclose such interests, relationships or matters by informing the [institutional body to be defined], in writing, for consideration by the Parties.

DUTIES OF MEMBERS

7. Upon selection a member shall be available to perform and shall perform her or his duties thoroughly and expeditiously throughout the course of the proceeding, and with fairness and diligence.

8. A member shall consider only those issues raised in the proceeding and necessary for a ruling and shall not delegate this duty to any other person.

9. A member shall take all appropriate steps to ensure that his or her assistant and staff are aware of, and comply with, paragraphs 2, 3, 4, 5, 6, 17, 18 and 19 of this Code of Conduct.

10. A member shall not engage in ex parte contacts concerning the proceeding.

INDEPENDENCE AND IMPARTIALITY OF MEMBERS

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11. A member must be independent and impartial and avoid creating an appearance of impropriety or bias and shall not be influenced by self-interest, outside pressure, political considerations, public clamour, and loyalty to a Party or fear of criticism.

12. A member shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of her or his duties.

13. A member may not use her or his position on the arbitration panel to advance any personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence her or him.

14. A member may not allow financial, business, professional, family or social relationships or responsibilities to influence her or his conduct or judgement.

15. A member must avoid entering into any relationship or acquiring any financial interest that is likely to affect her or his impartiality or that might reasonably create an appearance of impropriety or bias.

OBLIGATIONS OF FORMER MEMBERS

16. All former members must avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the decision or ruling of the arbitration panel.

CONFIDENTIALITY

17. No member or former member shall at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding except for the purposes of that proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to adversely affect the interest of others.

18. A member shall not disclose an arbitration panel ruling or parts thereof prior to its publication in accordance with [Chapter X (Dispute Settlement)].

19. A member or former member shall not at any time disclose the deliberations of an arbitration panel, or any member's view.

EXPENSES

20. Each member shall keep a record and render a final account of the time devoted to the procedure and of her or his expenses as well as the time and expenses of his or her assistant.

MEDIATORS

21. The disciplines described in this Code of Conduct as applying to members or former members shall apply, *mutatis mutandis*, to mediators.

]

ANNEX III

MEDIATION PROCEDURE

ARTICLE 1: OBJECTIVE AND SCOPE

1. The objective of this Annex is to facilitate the finding of a mutually agreed solution through a comprehensive and expeditious procedure with the assistance of a mediator.
2. This Annex shall apply to any measure under the scope of this Agreement [*exact scope and possible carve-outs to be discussed at later stage in light of content of CETA*] adversely affecting trade or investment between the Parties.

SECTION A MEDIATION PROCEDURE

ARTICLE 2: INITIATION OF THE PROCEDURE

1. A Party may request, at any time, that the Parties enter into a mediation procedure. Such request shall be addressed to the other Party in writing. The request shall be sufficiently detailed to present clearly the concerns of the requesting Party and shall:
 - (a) identify the specific measure at issue;
 - (b) provide a statement of the alleged adverse effects that the requesting Party believes the measure has, or will have, on trade or investment between the Parties; and
 - (c) explain how the requesting Party considers that those effects are linked to the measure.
2. The mediation procedure may only be initiated by mutual agreement of the Parties. When a Party requests mediation pursuant to paragraph 1, the other Party shall give good faith consideration to the request and reply in writing within 10 days of receiving it.

ARTICLE 3: SELECTION OF THE MEDIATOR

1. Upon launch of the mediation procedure, the Parties shall agree on a mediator, if possible, no later than 15 days after the receipt of the reply to the request.
2. A mediator shall not be a citizen of either party, unless the parties agree otherwise.
3. The mediator shall assist, in an impartial and transparent manner, the Parties in bringing clarity to the measure and its possible trade effects, and in reaching a mutually agreed solution. The [code of conduct of the dispute settlement chapter] shall apply to mediators. Rules 3

through 8 (notifications) and 49 through 55 (translation and calculation of time limits) of the [Rules of Procedure of the Dispute Settlement Chapter] shall also apply, *mutatis mutandis*.

ARTICLE 4: RULES OF THE MEDIATION PROCEDURE

1. Within 10 days after the appointment of the mediator, the Party having invoked the mediation procedure shall present, in writing, a detailed description of the problem to the mediator and to the other Party, in particular of the operation of the measure at issue and its trade effects. Within 20 days after the date of delivery of this submission, the other Party may provide, in writing, its comments to the description of the problem. Either Party may include in its description or comments any information that it deems relevant.

2. The mediator may decide on the most appropriate way of bringing clarity to the measure concerned and its possible trade-related impact. In particular, the mediator may organize meetings between the Parties, consult the Parties jointly or individually, seek the assistance of or consult with relevant experts⁸⁰ and stakeholders and provide any additional support requested by the parties. However, before seeking the assistance of or consulting with relevant experts and stakeholders, the mediator shall consult with the Parties.

3. The mediator may offer advice and propose a solution for the consideration of the Parties which may accept or reject the proposed solution or may agree on a different solution. However, the mediator shall not advise or give comments on the consistency of the measure at issue with this Agreement.

4. The procedure shall take place in the territory of the Party to which the request was addressed, or by mutual agreement in any other location or by any other means.

5. The parties shall endeavour to reach a mutually agreed solution within 60 days from the appointment of the mediator. Pending a final agreement, the parties may consider possible interim solutions, especially if the measure relates to perishable goods.

6. The solution may be adopted by means of a decision of the [FTA joint body]. Either Party may make such solution subject to the completion of any necessary internal procedures. Mutually agreed solutions shall be made publicly available. However, the version disclosed to the public may not contain any information that a Party has designated as confidential.

7. On request of the Parties, the mediator shall issue to the parties, in writing, a draft factual report, providing a brief summary of (1) the measure at issue in these procedures; (2) the procedures followed; and (3) any mutually agreed solution reached as the final outcome of these procedures, including possible interim solutions. The mediator shall provide the parties 15 days to comment on the draft report. After considering the comments of the parties submitted within the period, the mediator shall submit, in writing, a final factual report to the parties within 15 days. The factual report shall not include any interpretation of this Agreement.

8. The procedure shall be terminated:

⁸⁰ Neither Party may object to an expert being consulted in a dispute settlement proceeding under this Chapter or under the WTO Agreement solely on the ground that the expert has been consulted under this paragraph.

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- (a) by the adoption of a mutually agreed solution by the Parties, on the date of adoption.
- (b) by a written declaration of the mediator, after consultation with the Parties, that further efforts at mediation would be to no avail;
- (c) by a written declaration of a Party after exploring mutually agreed solutions under the mediation procedure and after having considered any advice and proposed solutions by the mediator. Such declaration may not be issued before the period set out in Article 4.5 has expired; or
- (d) at any stage of the procedure by mutual agreement of the Parties.

SECTION B IMPLEMENTATION

ARTICLE 5: IMPLEMENTATION OF A MUTUALLY AGREED SOLUTION

1. Where the Parties have agreed to a solution, each Party shall take the measures necessary to implement the mutually agreed solution within the agreed timeframe.
2. The implementing Party shall inform the other Party in writing of any steps or measures taken to implement the mutually agreed solution.

SECTION C GENERAL PROVISIONS

ARTICLE 6: CONFIDENTIALITY AND RELATIONSHIP TO DISPUTE SETTLEMENT

1. Unless the Parties agree otherwise, and without prejudice to Article 4(6), all steps of the procedure, including any advice or proposed solution, are confidential. However, any Party may disclose to the public that mediation is taking place. The obligation of confidentiality does not extend to factual information already existing in the public domain.
2. The mediation procedure is without prejudice to the Parties' rights and obligations under the provisions on Dispute Settlement in this Agreement or any other agreement.
3. Consultations under the Dispute Settlement Chapter are not required before initiating the mediation procedure. However, a Party should normally avail itself of the other relevant cooperation or consultation provisions in this Agreement before initiating the mediation procedure.
4. A Party shall not rely on or introduce as evidence in other dispute settlement procedures under this Agreement or any other agreement, nor shall a panel take into consideration:
 - (a) positions taken by the other Party in the course of the mediation procedure or information gathered under Article 4.2;
 - (b) the fact that the other Party has indicated its willingness to accept a solution to the

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measure subject to mediation; or

(c) advice given or proposals made by the mediator.

5. A mediator may not serve as a panellist in a dispute settlement proceeding under this Agreement or under the WTO Agreement involving the same matter for which he or she has been a mediator.

ARTICLE 7: TIME LIMITS

Any time limit referred to in this Annex may be modified by mutual agreement between the Parties.

ARTICLE 8: COSTS

1. Each Party shall bear its costs of participation in the mediation procedure.

2. The Parties shall share jointly and equally the costs of organisational matters, including the remuneration and expenses of the mediator. Remuneration of the mediator shall be in accordance with that of the Chairperson of an arbitration Panel in [Rule 9 of the Rules of Procedure]

ARTICLE 9: REVIEW

Five years after the date of entry into force of this Agreement, the Parties shall consult each other on the need to modify the mediation mechanism in light of the experience gained and the development of any corresponding mechanism in the WTO.

Enhanced Cooperation on Science, Technology, Research and Innovation

1. The parties acknowledge the interdependence of science, technology, research and innovation, and international trade and investment in increasing industrial competitiveness and social and economic prosperity.
2. Building on this shared understanding, the parties agree to strengthen their cooperation in the areas of science, technology, research and innovation.
3. Further to Paragraph 2, the Parties shall endeavour to encourage, develop and facilitate cooperative activities [EU: on a reciprocal basis] in support of, or supplementary to the Agreement for Scientific and Technological Cooperation between Canada and the European Union. The Parties agree to conduct these activities on the basis of the following principles:
 - a) The activities are of mutual benefit to the Parties;
 - b) The Parties agree on the scope and parameters of the activities;
 - c) The activities should take into account the important role of the private sector and research institutions in the development of science, technology, research and innovation, and commercialization of goods and services thereof.
4. Enhanced cooperation on science, technology, research and innovation may include activities initiated, developed or undertaken by [CDN: any level of government] [EU: the Canadian Federal government, Canadian Provinces and Territories and the European Commission.]
5. The Parties shall encourage the participation of the private sector, research institutions, and civil society in these activities. Each Party, according to its laws, is responsible for encouraging relevant institutions and persons within its territory to participate in activities related to enhanced cooperation.

NB: The EU proposes replacing paragraph 5 with the following paragraph:

[EU: Each Party, according to its own laws, shall encourage the participation of the private sector, research institutions and civil society within its own territory in activities to enhance cooperation.]
